

# The Collaborative Review

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## WRESTLING WITH THE MODEL

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In December of last year, Barry Berkman, on behalf of the New York City Collaborative Law group, threw out a question to the CollabLaw listserve members, captioned, "Wrestling with the Model". The question had originally come up in the course of the two-day training I did with the New York City group a couple of weeks earlier. In its meta form, the inquiry questioned the distinctions in the roles of an adversarial attorney, a collaborative attorney and a mediating attorney. The constraints of the training schedule clearly did not allow for an adequate engaging of this excellent question. It remains a point of confusion for many and a topic worthy of a more thorough discussion than even the thoughtful exchange of e-mail perspectives that followed. I would like to broaden that discussion, and I see the Review as the perfect forum for that endeavor.

The problem was framed by a table attached to Barry's e-mail which summarized various client dynamics and distinguished the responses of the three different professional roles. Subsequent to the internet discussion that followed the posting of the question, Brian Florence, who organized Utah's large collaborative group and who has handled as many, if not more CFL cases than anyone I know, revised the grid in light of his extensive experience in all three fields. A copy of his take on the New York table can be found at the end of this article.

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## Wrestling With the Model

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In the original inquiry, the specific question of the New York City group was: [D]o we take positions as to law, fairness, [and the] appropriate result which would differ depending upon which side we represent? The question produced a wave of thoughtful responses as collaborative professionals weighed in with their differing perspectives. In participating in the dialogue as well as observing it, I was reminded of the challenge (as well as the excitement) that comes from such ground-breaking work as the development of this new paradigm. It brings with it an enormous responsibility to fulfill the express and implicit promises made to the consumers of our services for a more responsive and meaningful process of divorce. The challenge facing us is to define and differentiate our various professional roles, and our strategic responses, to the ever-changing dynamics of the clients and the process.

Let's begin the analysis with the traditional calibration of the attorney's duty: *To act in the best interests of the client.* In most jurisdictions, this standard is generally institutionalized into rules of professional conduct, canons of ethics, or some similar set of codified duties. As a measure of how far the field has matured, I remember significant amounts of time spent in trainings *circa* 1994-5, addressing the participants' concern as to whether one could ethically practice Collaborative Law *at all!* The "best interests of the client" standard is a wonderful lightning rod for discussions of practice and theory because any interpretation of its mandate depends entirely on the context. Stated another way, the best interests test for strategy and conduct in a competitive, power-based system will be altogether different from the application of the best-interest standard in a collaborative, interest-based process.

To understand the role that context plays we need to understand the assumptions and characteristics that underlie each system. Until a new conflict resolution paradigm arrived on the scene with the advent of the modern mediation movement, there was little incentive to examine the assumptions that form the basis of the adjudicatory model. The practical reality is that we spend most of our time as attorneys in litigation strategizing to win within the constraints of the system, with little time set aside for philosophizing about it. In that context, many of us have never stopped to consider the following assumptions of the adjudicatory model:

- That the clients are not capable of resolving their issues and the outcome will be determined by someone other than the clients (court, arbitrator, special master, etc.);
- The negotiation involves the division of limited resources;

- What one wins, the other loses;
- The deal today does not affect the deal tomorrow;
- There are no better alternatives to an adjudicated outcome.

If these assumptions appeal to a client at all, it generally will be to emotions, not logic. More often than not, the assumptions fail to respond to the true emotions of the parties. The choice of process has enormous consequences for the outcome of the parties' conflict and yet, historically, little time is spent discussing these consequences at the commencement of the typical litigation case.

By way of contrast, consider the assumptions of the collaborative, interest-based approach to negotiation:

- That significant common interests exist between the parties;
- That a shared process empowers each participant;
- That one side cannot achieve a maximized outcome without the other achieving the same;
- That self-interest and mutuality are two sides of the same coin;
- That the adjudicatory model is inadequate to the needs of the parties.

These assumptions recognize the positive elements that exist between the parties and which are the foundation points of building an effective process that will enable the parties to achieve a mutually beneficial resolution.

Moving beyond the context, as influenced by the nature of the process, another major process element that greatly impacts outcome is the style of the intervention. According to the *Riskin* Grid, a criterion used to characterize the management style of

any dispute resolution process, all professional interventions can be categorized as being *evaluative*, at one end of the spectrum, or *facilitative* at the other. The cross grid assesses each of those styles as being *broad* or *narrow* in their scope of application. An evaluative style is one in which the professional exercises significant control and influence over the process and the resulting outcome. The classic example of a narrow, evaluative style would be the settlement conference judge. Heavy on the doubt and dissonance strategy, the judge freely critiques, criticizes and recommends, taking pride in a reputation for "settling the tough cases".

From the attorney's perspective, litigation is a highly evaluative paradigm. It is a model in which the attorney takes responsibility for the prosecution of the case, which includes developing procedural strategies. In theory, it is the client's responsibility to make the substantive decisions about the outcome results. I say "theoretically" because, in the real world, the power and procedural complexities of the judicial process effectively eliminate the capacity of the clients to make anything but the narrowest of outcome choices. The legal procedures inevitably disempower the clients rather than increase their

capacity and opportunity for achieving maximized outcomes. In general, a major characteristic of the evaluative style of process management is that it is the attorney who takes responsibility for securing the best possible results, not the client — results that are dramatically restricted by the characteristics and impact of the adjudicatory process. The data from thirty plus years of mediated settlements makes this clear and unequivocal.

A facilitative style, by definition, is one that actively seeks to empower the client to assume responsibility for his or her circumstances and choices. A caricature of the facilitative/broad end of the spectrum is typified in the image of a mental health pro-

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## Wrestling With the Model

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professional asking of a client: "...And how did that make you feel." What is true about that stereotype is the facilitative objective that the client discover his or her own goals, objectives, strategies and solutions. The facilitative characteristic is to have the goals come from within rather than from without. The ultimate facilitative strategy could be one in which the professional assists the client in achieving the desired goals through the tactic that limits itself to the asking of strategic questions. To be sure, such an approach, where it might be successful, would require a high level of skill and strategic awareness. Most mediators, facilitating both sides of the conflict, slide up and down the *Riskin* Grid as circumstances, and their own style preferences, dictate. What is important to emphasize is that there is no right or wrong intervention, except as is measured by success for the clients.

The Collaborative Law model creates a unique opportunity for the confluence of professional skills. At the obvious risk of offending by stereotype, it is fair to say the attorneys tend toward professional personality styles that are at the evaluative end of the spectrum and mental health professionals tend toward professional personality styles that are at the facilitative end of the spectrum. Coming from a law background, I found a whole new dimension of theories and practices that I could use in developing my mediation practice twenty-two years ago when I engaged with mediators with mental health backgrounds, who did not approach conflict with the type of "bottom line" attitude that characterized the legal style. Out of this bilateral professional interaction, I became aware of this range of styles of intervention. As I came to understand the impact of the application of their facilitative style to the clients' processes, I chose to consciously move away from the evaluative style toward an approach that had client empowerment as its primary objective.

During the training last October, one of the mediating attorneys in the New York group said: "I don't see what is the difference between what I would do as a collaborative lawyer and what I do as a mediator". Aside from the obvious structural differ-

ence (having an attorney-client relationship versus remaining a professional neutral), the inquiry goes to the question of *intervention style*, not process structure. Two collaborative attorneys who are skilled in interest-based negotiation and committed to achieving client empowerment by employing a facilitative style in the process, would appear--to the disinterested observer--to be indistinguishable from a process of bilateral mediation. The distinguishing characteristic would be one of form (that each attorney has a contractual relationship with the individual client), not one of substance (a shared commitment to creating a process that empowers the clients to take responsibility for creating their own maximized outcome).

When viewed through the perspective of style, not form, the challenges and assumptions of "wrestling with the model" open the door to an whole other dimension of possibilities about process, strategies, goals and objectives associated with client representation in the collaborative paradigm.

*The editors of the Review are pleased to publish Chip Rose's thoughtful, well-reasoned contribution to our emerging understanding of what it means to be an effective collaborative lawyer. Chip's discussion of the interrelatedness of client empowerment and the emergence of mutually beneficial outcomes, and the lack of any conflict between facilitative collaborative practice and the lawyer's duty to advance the interests of the clients, represents a succinct and useful synthesis of the theoretical (the "Riskin Grid") and the very practical (the collaborative "listserv" thread that got named "Wrestling with the Model" which was exactly that: collaborative lawyers struggling with actual clients, cases and issues). To continue the dialogue, we invite attorney members to comment briefly on Chip's article, specifically regarding whether they see any duty on the part of facilitative, collaborative attorneys to advise their clients about applicable law that would differ from the duty of a mediator, and if so, how that duty can be discharged in a constructive, client-empowering solution oriented manner.*

*Pauline Tesler, co-editor.*

# Professional Roles

When I'm an attorney representing a client in a <b>REGULAR FOUR WAY</b>	When I'm acting as a <b>MEDIATOR</b>	When I'm being a <b>COLLABORATIVE LAWYER</b>
I negotiate for my client (which may include interest-based negotiations IF I feel it's in his/her best interests)	I reframe to create interest-based negotiations by the spouses	I help create interest-based negotiations by both spouses and the other lawyer, believing my client will be best served by this process
I speak for my client (except when it's helpful for him/her to talk)	I let the spouses speak for themselves	I prepare my client to do much of the speaking, having first helped him/her understand effective negotiation with process anchors
I am bound to get the "most" for my client, regardless of fairness	I leave what is acceptable up to the spouses and disregard my own sense of fairness	I try to understand my client's view of "fair" and assist by teaching him/her how to negotiate for this while taking into account the other side's view of "fair"
If I think of a brilliant solution to an issue that favors the other client, I keep my mouth shut	I try not to view solutions as favoring one side or the other but will assist by creating options	All possible solutions are on the table. I help my client evaluate the consequences if any particular solution is accepted
My primary loyalty is to my client	My loyalty is to providing a safe process so that each spouse can feel as if his or her needs have been met	I have loyalty to my client and the process. If I perceive a conflict between the two, I discuss it with my client. My conflict may not be his
With some limited exceptions, I must keep my client's confidences	Confidences revealed to me in caucus must be kept but I may encourage their release	I am still required to maintain confidentiality but try to teach my client that openness is more likely to be in his/her best interests
I will posture or take strategic positions on behalf of my client if that's what he/she needs/wants	I have no client for whom I have to posture or strategize	Collaborative four-ways are to be open and honest. There should be no need for anyone to posture or strategize.
I will do everything ethically possible to protect my client's interests	My obligation is to protect the neutrality of the process	My client's interests are being protected if I am a skillful collaborative lawyer and don't focus on the result

*Thanks to Bob Collins, Barry Berkman and Brian Florence*

# COLLABORATIVE SEPARATION AND DIVORCE

by Susan Gamache, PhD, Vancouver, CAN

Collaborative Divorce is a revolutionary new process that brings the best of legal, personal, and financial wisdom to the process of separation and divorce in a humane and cost-effective fashion. This multi-disciplinary model offers a process of separation and divorce that protects the dignity, integrity and long-term best interests of all family members.

Most divorcing spouses are also parents. In Canada, roughly 30% of children have experienced the end of their parents' marital relationship. Research has shown that it is not the divorce itself that is the most destructive element but rather the distress, conflict and loss that can occur as a function of the divorce process. Collaborative Divorce safeguards children's needs for stability and effective planning throughout the divorce process and good working relationships between their parents post divorce.

Collaborative Divorce grew simultaneously from the work of two discrete groups. In Minnesota, Stuart Webb, a family lawyer who was discouraged, made a personal decision to no longer participate in the adversarial process of family law as he knew it, opting instead to work collaboratively with his clients. In family law disputes, his goal became to create and practice collaborative, non-adversarial strategies to help clients achieve agreement in a dignified and respectful manner. His approach was well received. Currently, there are 45 family lawyers in Minnesota who practice what has been called "Collaborative Family Law", some of whom no longer practice any adversarial law at all. Collaborative Family Law can be used to address any type of situation in family law. For the purposes of this article, we will focus on separation and divorce.

Simultaneously, an interdisciplinary team of professionals in California led by co-directors Peggy

Thompson and Nancy Ross (psychologists, divorce attorney, social worker, financial counsellor) were developing strategies to work together to provide separating and divorcing families with constructive methods of negotiating their way through the sometimes difficult family transitions that divorce can bring. Although many professionals are involved, this team has found that its work is generally brief and therefore far more economical than adversarial methods. For example, the cost of the average collaborative divorce is a fraction of the cost of one day in court in

California. This approach to working with separating parents has been called "Collaborative Divorce" *Ed. note: Collaborative Divorce<sup>SM</sup> is service-marked, which should be so noted as to each reference in this article.*

Recently, these two groups met, recognized their complementarity, and integrated. Lawyers who practice Collaborative Family Law make ideal team members for

Collaborative Divorce teams. Likewise, the interdisciplinary team strengthens the work of the Collaborative Family Lawyers. For example, the lawyers receive instructions from clients who are making well-informed decisions clearly and calmly.

Regarding Collaborative Divorce, teams of professionals made up of mental health professionals (divorce coaches), collaborative family lawyers, a financial specialist and a child advocate can work together with family members for a dignified, healthy and cost-effective resolution to the process. The degree to which each type of professional is involved will depend on the unique needs and circumstances of each family.

## Collaborative Divorce safeguards children's needs for stability and effective planning throughout the divorce process and good working relationships between their parents post-divorce.

### What do all of these people do?

*The Collaborative Lawyers.* In the collaborative process, each of the divorcing spouses has a lawyer committed to their needs. However, the lawyers must agree in advance to set aside adversarial strategies and preparations for trial. This then frees the collaborative lawyers to work toward positive, family-friendly solutions without the burden of preparing for trial. If the collaborative process fails, the collaborative lawyers must retire from the case and refer the family to a trial lawyer. Also, the couple agrees that all records, correspondence, case notes and discussions from the collaborative process are not to be used in any future legal action, other than documents required to be produced in court (i.e., financial statements).

*The Divorce Coaches.* Each spouse can work with a divorce coach to provide a safety net for the difficult times that may be a part of the divorce and to develop the new co-parenting relationship. This process helps spouses to recognize the end of their marriage and to move on to create fulfilling lives post-divorce. When children are involved, divorce coaches teach divorcing parents how best to protect themselves and their children from the risks associated with divorce in the present and to look to the future needs of their family. This work also includes assisting spouses to clarify how they feel and think about issues, improve communication about sensitive topics, and to develop a parenting plan.

*Financial Specialist.* The financial specialist is a neutral third party who helps sort out the family finances. Divorcing spouses get help with handling immediate financial concerns as well as long-range planning. Parents get help addressing immediate concerns of children and anticipating future financial considerations. The financial specialist helps the couple understand and organize their financial information in advance of meeting with the lawyers. In this way, the lawyers can focus on finalizing a settlement efficiently, thereby making the best use of the lawyers' time.

*Child Specialist.* Most divorces include children. The child advocate is a neutral third party whose job is to understand the situation from the perspective of the children and to advocate for their best interests. Although all team members keep the children's best interests in mind, the child advocate maintains this focus exclusively throughout, thereby assuring that during complicated and sometimes chaotic divorce processes, concerns of the children are not overshadowed by other, equally important considerations. The child advocate provides an opportunity for the child(ren) to ask questions and to identify problems or worries, and provides information and suggestions to the parents and to the team, especially in the development of a parenting plan.

### How does the process work?

There are many ways that a collaborative divorce process can work. Creating a working team is the first step. Spouses can begin this process through a visit with either a participating mental health professional or a collaborative lawyer. All participating professionals will have names of others who are available to work in this process. Once all relevant professionals are on board, an agreement is then reached between the professionals and parents that allows the team to work together collaboratively. The degree to which each type of professional is involved will depend on the unique needs and circumstance of the family.

As in any interdisciplinary team, spouses are requested to waive confidentiality so that team members can communicate with each other. (All professionals involved are still held to the standards of confidentiality of their respective professions.) The roles of all parties are clearly laid out and discussed until both spouses fully understand the process. The signing of this agreement means that the professionals can communicate with each other and that if the collaborative process is not successful, the spouses have agreed that all records are protected from future use

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# Collaborative Separation and Divorce

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in court proceedings. Relevant agreements also are made between each spouse and the professionals they work with directly. The team then meets, either in person or teleconference, to consolidate.

In the second phase, the unique dynamics of the particular family are understood. Information is gathered in one-on-one meetings with professionals to assist family members to address pertinent issues and to assist all professionals in making respective recommendations. Various four-way meetings are held. These can include both spouses and collaborative lawyers, or spouses and divorce coaches. The financial specialist or child advocate can also be included as neutral third parties as necessary. Given their neutral status, these specialists are especially valuable if particularly difficult circumstances arise. These meetings allow for brain-storming and problem-solving in difficult situations.

The third phase involves negotiating and settling issues. Parents meet with lawyers and/or divorce coaches to reach the final settlement.

It is interesting to note that there have been cases in which the couple has reconciled in the process of working through a Collaborative Divorce. Although not a frequent occurrence, it is a credit to the process that the emphasis on communication skills and problem-solving in this model can encourage this possibility. In the event that a reconciliation occurs, the improved interpersonal skills of the couple will continue to benefit them in their spousal relationship.

## **The Benefits of Collaborative Divorce**

Collaborative Divorce responds to many of the issues that we face as this relatively new social phenomenon called 'divorce' becomes a mainstream event. This process helps us to understand divorce as an important social phenomenon that deserves to be dealt with in a way that assists separating spouses to create honorable and life-enhancing results for

themselves and for their families.

Historically, for a divorce to be granted, one spouse had to be found 'at fault'. The judge then proclaimed a punishment for the guilty party. The advent of the "no fault" divorce challenges us to find ways to assist families to move through this transition without fueling the fires of blame and shame.

Another important cultural change is that of increased life span. Our life-expectancy has doubled since 1850, thereby making 'til death do us part' a very different proposition. In the 1700s, the average length of a marriage was only 7 years because of the death of a spouse. Today, we have the opportunity to be married to the same person longer than ever before in history. During the 1940s and 1950s divorce overtook death as the leading cause of the termination of a marriage, leading sociologists to consider divorce as a functional substitute for death. As such, continued, cooperative relationships between former spouses is a new social phenomenon. It is no wonder that, as a society and as individuals, we struggle to understand and support positive relations between former spouses.

But what about the children? Although we know that the event of a divorce is only very loosely associated with children's well-being, we do know that there are many risk factors and vulnerabilities for families as they navigate the process. As mentioned previously, it is not the divorce itself that is the most destructive element, but rather the level of distress, conflict and loss that can occur as a function of the divorce process. Nevertheless, next to death or disability, divorce results in the most radical and permanent reorganization that a family is likely to face. If divorce is necessary, we owe it to our children to do it as sensitively and as sanely as we can.

Collaborative Divorce protects children in

several ways. First, it is cost-effective, thereby protecting the financial resources of the family. Second, the non-adversarial approach safeguards the common ground of the separating spouses, building on the available goodwill and recognition that their co-parenting relationships will go on forever. Every effort is made to protect family members from the fear and anger that can be a part of the divorce process, and to encourage and foster the best possible relationships post-divorce. Third, divorce coaches work to create the best possible family environment post-divorce. Parents are fully informed of the risk factors of divorce and how best to protect their children through this process. Parenting plans that actually work are developed. Should there be any future problems or if developmental changes require adjustments, families can return to their Collaborative Divorce team to make any necessary changes. Finally, and perhaps most importantly, Collaborative Divorce includes child advocates whose job is to understand the children's perspectives and to advocate for their best interests throughout the process.

Collaborative Divorce allows for a process to be created that meets the needs of the family. Although it is possible to conduct a divorce with only collaborative lawyers (generally called Collaborative Law), it is highly recommended that the interdisciplinary team be used when there are children involved, for all the reasons described earlier. Divorce represents a radical and permanent restructuring of family life and deserves to be done properly. Also, the cost of mental health professionals can often be reimbursed through extended medical benefits.

When separating parents are highly cooperative, divorce coaches can 'bookend' the process with a meeting early in the process and once at termination. The early meeting provides an opportunity for the parents to connect with the divorce coaches and to receive general information about the process. This then creates a safety net that may or may not be used throughout the divorce process. When the divorce is

settled, a final meeting debriefs the process and provides information about what the parents can expect in the future. For example, roughly 80% of divorced parents will remarry. The status of the former spouses can exert a powerful influence on the well-being of the stepfamily. Families, divorced or not, go on forever.

Collaborative Divorce is now available in the Greater Vancouver area. A dedicated team of mental health professionals and collaborative lawyers are currently implementing this model. If you would like more information about this innovative and ethical approach to supporting families through these delicate transitions, please call: The Collaborative Group at 878-1498, or go to our web site at [www.CollaborativeDivorceBC.org](http://www.CollaborativeDivorceBC.org).

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## DIVORCE LITIGATION: Lessons from Henry VIII and the AFLAC Duck

by Michael A. Loduha, Milwaukee, WI  
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This is a story about two different relationship paradigms, the rate of change of these models and the role of these models in family law.

The relationship between a person's perspective in life and the conclusions reached from that perspective was emphasized in the Collaborative Divorce<sup>sm</sup> seminar I recently attended. While the analogy is to the visual, the relationship influences both the substance and the meaning of an observation. The blind men and the elephant analogy showed the substantive element of the relationship. The 'what it is' aspect of the elephant was different based on the specific partial information of each of the blind men. But there is a second level of relationship between perspective and conclusion – the level of meaning. This is shown by the rhetorical question, "Is the glass half empty or half full?" The effectiveness of the collaborative professional is enhanced by a broad understanding of the relationship paradigm in divorce litigation.

The problem is not change – things are always changing – it is the asymmetry of the rates of change we encounter. Imagine traveling down the middle lane of a freeway so wide you can't see the shoulder on either side. Life is kind of like that. We travel along occasionally sending a gesture of peace or contempt, depending on how the day is going, to the drivers in front, behind or on either side of us. While we may speed up or slow down together, the speed we're traveling isn't particularly relevant if what we're concerned about is our relationship with these other drivers – our rights if you will. Our expectation of when we will get to our destination vis-à-vis our fellow travelers is set and we all share the journey. Then comes along a driver from Illinois, in one of those hot Illinois cars. (Feel free to insert the neighboring state of your choice.) This person goes at a different speed,

changing lanes and otherwise upsets the orderly relationship we had with our fellow travelers on the highway of life. We could all drive like that – after all, they do in \_\_\_\_\_ (fill in state of choice) and it would probably work. They generally survive the trip to the office and they cover the miles in about the same time we do. It's just that their way is so confusing to those of us who really do own the road. The road to divorce is like this.

A domestic dispute resolution model exists in every culture – be it the civil courts in western nations, the village elders in the jungles of Bali or the commissar of domestic affairs in communist China. Our model is changing, and changing quickly in relation to the capacity for change in the social system we've assigned to handle this task: the courts. We can benefit those we serve by understanding the paradigm behind the courts and the impact caused on their good order occasioned by 'shortcuts' society has demanded.

To make sense of the divorce process in the courts it helps to understand the courts historically. Our system of common law justice goes back to courts of Henry VIII and 16<sup>th</sup> century England. Remember that Ole' Marryin' Hank wanted things his own way, and that's pretty much what he got. He well understood the details of absolute power. Because he couldn't be everywhere, he appointed loyal little kinglets – 'judges' he called them – to act in his place and to 'hold court' in his absence and to decide that which needed deciding. Recalling the fate of Henry's Chancellor, Sir Thomas More, who didn't quite suck up as required, most judges tried their best to decide things exactly as Henry would have if he were not out hunting or something. This predilection in judges – to think they are the King's 'special guy' - has proven to have

remarkable staying power, showing up in divorce courts today.

In everyday life we do things with other people because we have agreed. Where two or more people agree to do – or not to do – something each affecting the other, it is called a contract. This is a great idea and it works pretty well right up to the door of the courtroom where, thanks to Henry and his progeny, it stops working entirely. It is sort of like agreements are Superman and the courtroom is full of Kryptonite. Once someone – call her the Petitioner – asks the judge to intervene and end the legal relationship society must respect - marriage - she submits herself to the authority of ‘Henry’s Guy’ – the judge. By a bit of legal *Ipse Dixit* (remember Henry was as much an absolute ruler then as the IRS is now), when the paperwork is handed to the other guy, the Respondent, the court has power over him as well. From this point on, it doesn’t matter what the Petitioner and Respondent want or what they agree to. It only matters what the judge orders. An agreement between the parties concerning the subject for which they are in court has no legal or binding effect at all. It is not a contract and the law will not enforce it. Once the parties are ‘in court’ all that matters is what the judge orders them to do or to refrain from doing. Once the court has made an order, the parties are not at liberty to ignore it without risking the consequences of contempt of court. Fortunately, we don’t have ‘divorce police’ who independently investigate and enforce the orders of the judge. Our system is to wait until one of the parties comes into court and whines that the other party is ignoring the order before enforcement is undertaken. There are serious and valid reasons this is so, and the success of our society and our civil justice system over the centuries tells us that we mess with this paradigm at our peril.

This operational paradigm in the courts is sort of a ‘Tastes Great’ to Collaborative Divorce’s<sup>sm</sup> ‘Less Filling’. In Collaborative Divorce<sup>sm</sup> the ‘power’ comes from the parties, not the judge. So why do bailiffs still carry a gun?

This is where the *AFLAC* duck comes in. The duck represents the magic of modern make-up technology - or legal shortcuts – allowing one thing to look like another quite convincingly. For example, while you wouldn’t think so at first glance, you can tell from subtle body configurations and that wide and cheerful smile that the *AFLAC* duck is played by Julia Roberts with a voice over by Gilbert Gottfried. Similarly skilled lawyers disguise agreements between the parties to a divorce so that they look like court orders. The converse is also true. Judges, needing to save time, wish to order the divorcing parties before them to do what they agree to do. After all it is their marriage, their children and their future and judges, the legacy of Henry VIII notwithstanding, are people of their times.

In society’s rush to identify and protect individual rights and freedoms, we have begun to think that the marriage belongs to the husband and the wife. But it is not so. As the ghost of Big Hank reminds us, the marriage belongs to the king; that is, to society as a whole. The legal status of marriage must be respected by others such as insurance companies, mortgage lenders and the like and as such it goes beyond consent or contract purely to be personal to the parties. The dynamic between the individual and some or all of the rest of society is expressed in the concept of ‘rights’. Although the specifics of the case deal with the individuals before the judge as parties, the principles the court must protect resonate to society as a whole. The process by which rights valuable to everyone in society is expressed in the lives of the Petitioner and Respondent is called litigation. Most lawyers understand the difficult path an individual takes through the thicket of the law and most lawyers want to take such shortcuts through the briars as are possible. These shortcuts are often in the form of something called a ‘stipulation’. A stipulation is the agreement of the parties to jointly ask the judge to order them to do what they want to do. Like the make-up artists who

*Continued on page 12*

# Henry VIII and the AFLAC Duck

*Continued from page 11*

turn Julia into the duck, these shortcuts leave the impression that it is the will of the parties – in the context of the privacy of their marital relationship and the privacy of its dissolution – that is at work. That is the image, but not the reality, of what is afoot in the courthouse.

In their concern for the welfare of the parties and the children as individuals, it is easy for collaborative professionals to see the issues of dissolution in terms purely private to the individuals involved. It is also easy to see the emotional anguish and personal weaknesses of the parties as a fault of ‘litigation’, as if it was created to make the difficult more painful. It is wise for the collaborative professional to keep in mind that it is the absence of a functioning civil justice system that spawned segregation and it is the presence of such a system that had a large part in setting us free. Collaboration works as an alternative to litigation, but not in spite of it.

## Points Summary

- √ Relationships, like elephants, aren’t always as they seem.
- √ The human tendency to ascribe meaning to an observation is influenced by our predisposition.
- √ The authority paradigm between court and the parties in divorce exists for a reason, namely to support the concept that marriage is a public as well as a private matter.
- √ The rate of a change in the courts and of society isn’t matched and this lack of matching affects our perception of the litigation process.
- √ Collaborative professionals best serve their clients by understanding the divorce litigation from a historical and sociological perspective as well as from the humanistic and private relationships involved.

*Michael A. Loduha is Executive Director of Advocates Network, Ltd., a not-for-profit collaborative law multidisciplinary network of independent professionals. Mr. Loduha is also a practicing attorney with over 25 years’ experience in general practice and trial work. He has developed a number of systems through his consulting work in practice development that have helped law firms increase their client base and improve services through a variety of methods, including client surveys and market research. These systems encompass: Client Perceptions, Data Base Practice Development, Professionalism and Ethics. His presentations have been a part of numerous bar association meetings and his programs have been heralded as effective and ethical alternatives to large ads and media budgets. In addition, Mr. Loduha is the author of several related articles published in the Wisconsin Lawyer, Corporate Report Wisconsin, Law Office Administrator, Missouri Bar Journal, Michigan Lawyers Weekly and the Tennessee Bar Journal. He is the recent past president of the Manitowoc County Bar Association and a member of the State Bar of Wisconsin serving on several committees including the Diversity Outreach Committee and the Solo and Small Practice Committee. Mr. Loduha is a graduate of Marquette University Law School.*

# COLLABORATIVE PRACTICE ANNOUNCEMENTS

## LOUISIANA'S CALL FOR HELP FORMING A COLLABORATIVE COURT

Central Louisiana is committed to joining the Collaborative movement. We are entering with a top-down comprehensive model. Good fortune is smiling and thanks to The Rapides Foundation we anticipate having funds to provide training, public education and counseling services for the next three years. As a presiding domestic court judge, I have access to significant judicial resources

Now I need each of you. Eleven years of domestic jurisdiction, reading theory, talking to teachers, speaking with children of divorce, consoling friends devastated by the litigation process and watching well meaning fellow judges brag about "new ideas" for "forcing" custody plans convinces me of the need for a collaborative process. With the opportunity and commitment to design a state-of-the-art Collaborative Court, I solicit input from those of you in the trenches. This is not a solicitation for specific training programs, but rather a request for what innovative design ideas you think are the most important ingredients. This is a chance to share your experience of what does and does not work.

Very briefly, the current working design is a choreographed launch as follows: develop a court sponsored web page resource center describing the divorce process (adversarial and collaborative), develop mental health seminars, train the professionals (lawyers, mental health and financial advisers) and list them on the web page. With this infrastructure in place, begin a massive public education blitz to change the culture of the conflict at street level. Without being more specific, I offer that framework for peer review.

To manage what hopefully is a massive amount of input, I ask that you dig down and distill what you think are the three most important elements to include and/or avoid when starting up a collaborative court/group from scratch. If you are reading this, you are obviously committed to making a difference and this is just another way to collaborate with all you fellow professionals by sharing your practical wisdom.

Please send contributions to Judge W. Ross Foote at [judgefoote@centurytel.net](mailto:judgefoote@centurytel.net), or fax to 318-484-2704. Physical address is PO Box 1431 Alexandria, LA, 71301. For my information, please include your profession, any Collaborative Group affiliation, years of collaborative work and approximate number of your successful collaborative divorce cases.

**The Hon. W. Ross Foote, Louisiana**

## FUNDED STUDY OF COLLABORATIVE PRACTICE

The Social Science and Humanities Research Council has recently announced the funding of a three year project (2001-2004) involving the examination and evaluation of the potential impact of a phenomena described as "collaborative lawyering". Dr. Julie MacFarlane of the University of Windsor Faculty of Law (presently Visiting Professor at Osgoode Hall Law School) is the Principal Investigator.

This study will select four sites and at each track the progress of a sample of cases where legal services have been contracted on a collaborative basis. The lawyers and clients involved will be interviewed (confidentially and all data anonymised) at various stages of the case. Focus

groups at each pilot site will discuss the collaborative process and evaluate its impact on the practice of law. The resulting data will allow an evaluation of the potential and the problems inherent in the collaborative lawyering model and an assessment of the significance of the development of specialized "settlement" counsel. A key focus of the project will be the impact of collaborative lawyering on the practices, strategies and attitudes of lawyers generally and in particular on the traditional model of lawyer-to-lawyer negotiations- and the changing model of client service implied by the collaborative model. For further information, contact Julie MacFarlane at [julie@windsor.ca](mailto:julie@windsor.ca) or Beth Beattie, at [bethbeattie@home.com](mailto:bethbeattie@home.com)

## COLLABORATIVE DOCUMENTS FOR YOUR CLIENTS

**What a Divorce Coach Can Do For You**

© Courtesy of Susan Gamache, Ph.D., Vancouver

## Welcome to The Olympics!

As you enter the world of Collaborative Separation and Divorce, a Divorce Coach can be extremely useful to you in a number of ways. In essence, the Divorce Coach is there as your personal assistant. Although Divorce Coaches are all licensed mental health practitioners, our job is not to do therapy with you. Rather, our job is to assist you in whatever way we can, to navigate the separation and/or divorce process, and to help you to create the foundation for the best post-divorce family you can possibly have.

**Imagine white-water rafting (The present).** Our job is to coach you in the skills necessary to make it through the turbulent ups and downs of the separation and divorce process.

**Imagine a marathon runner (The future).** You need to be able to continue to perform in the years ahead in order to create a safe and stable post-divorce family for you and your children. Through grade school, graduations, university, convocations, marriage, first babies and so on, your children will look to you to participate in their lives. We know that children are extremely sensitive to any conflict in a separating/divorced family and any ongoing conflict that remains once all the papers are signed. We also know that strong parenting relationships are a child's greatest asset. You and your former spouse will need new skills in order to be effective co-parents in your post-divorce family. Equally, your life post-divorce will be greatly enhanced by a successful separation process.

**Imagine a baseball team (The big picture).** Families are like baseball teams in the field. As life happens (the batter hits the ball) family members have to work together to respond to events that impact the family (a grounder coming straight toward 2nd base or a fly out to left field). Your post-divorce family is like a baseball team in two separate but connected ball-diamonds side-by-side. In order to be effective you will need to be able to respond to life situations in a coordinated fashion.

**What will the legacy of your divorce be for your children?** Although it may seem that right now, your divorce is between you and your spouse, the reality is that your children will carry your divorce all of their lives. What will the legacy of your divorce be? Will your children be proud of how their parents handled a difficult situation? Or will your relationship with your former spouse be a constant stress and create tension in the midst of their most joyous occasions like graduating from high school, getting married, or having the first baby? Right now, you are creating what your children will be saying about their parents' divorce 5, 10, and 15 years down the road. Our job is to assist you to create a separation and divorce that is consistent with your highest aspirations for an honorable and safe resolution to the issues at hand and one that ensures the emotional safety of your children in the present and future.

**Could it be any more difficult to train for the Olympics?**

*[Biographical information about Susan Gamache follows her article on page 9]*

## FINANCIAL SPECIALISTS PROVE TO BE THE KEY IN COLLABORATIVE DIVORCE

by Cathy Daigle, CFP, CDP, Los Gatos, Cal.

As a Financial Specialist, I see many clients who are overwhelmed with the financial decisions they are facing. They tell me they need more education around the financial issues, so that they can make informed decisions and move through the dissolution process.

Attorneys may want to provide discussion, but there's just not enough time to spend on clarifying concerns, providing education, and talking about the financial outcome of various settlement scenarios. And, for many attorneys, this is simply not their area of expertise.

The Financial Specialist component of the original Collaborative Divorce<sup>SM</sup> Model has evolved into what is now a critical part of the team. As a neutral, with focus on financial concerns and objectives, as well as sorting through the financial pie, we are helping the Team Members understand the emotions around money, and helping the attorneys sift through the data and review the financial outcome of settlement options.

We are neutral facilitators; not mediators. Nor are we giving legal advice. We are a vehicle helping to utilize data to promote discussion. Together, the Team is educating the clients and assisting them make better financial decisions.

Attorneys and Coaches are now asking us to get involved early on in the process. They're finding it useful to look at the big picture helping to understand the fairness and affordability of settlement scenarios. When the financial findings are presented in a five-way meeting as a group, we ensure that all of the data is shared and it is less likely that one spouse will become fixated on any one scenario. Questions and answers are addressed at the time the data is presented and as a group.

This is helping to avoid money mistakes in divorce. Education around cash flow, effects of inflation and taxes, and the ability to rebuild finances are key to making informed financial decisions. Custom software including charts and graphs tell a big story in a simple, easy-to-read format. Clients are feeling empowered and

decisions are being made based upon having more data.

Collaborative Divorce Teams are making use of the Financial Specialist in new ways. A recent case involved the wife insisting that she keep the home. Even with support payments, the cost of keeping the home was way out of reach. The Financial Specialist together with the attorneys strategized and decided that the best way to present the financial findings was in a five-way meeting. In addition, the Team agreed to look at what it would take to keep the home as well as the cash flow benefits, if any, of selling the home. Charts and graphs were used to illustrate the cash flow challenge and thus, set the stage for discussing alternatives. This tool provided an objective viewpoint in an emotional situation. Shortly thereafter, the clients decided to sell the home and relocate to an affordable area where the kids could stay in the same school.

Financial Specialists are adding value to the process; assisting the family, the attorneys and the process. Clients are taking time to reflect on both the short-term and long-term results before making decisions. This helps them remain focused on respective responsibilities and long-term objectives. Attorneys are accessing easy-to-read visual aids and helping the clients "get it". This is a different way of thinking and practicing.

Advantages to both the client and the Team are many. The client develops a better understanding of the financial outcome and feels empowered. All Team members establish a level of communication that is rare in the industry. The trust and respect of boundaries, sharing of information and staying committed to the process is producing win-win settlement agreements.

*Cathy L. Daigle is a Certified Financial Planner and Certified Divorce Planner located in Los Gatos, California. She is an active member of the South Bay Collaborative Group, the Collaborative Law Association inc., the International Academy of Collaborative Professionals, and the Institute for Certified Divorce Planners.*

## DEAR COLLABOR

*Dear Collaborator:*

*Please help! Twice this week, in two separate cases, I've sat there in disbelief at a four-way while the wife of my client simply ignored all the commitments we had made about sticking to agendas, not bringing up unplanned matters, behaving respectfully, etc. etc., and made hash out of our four-way meetings.*

*In one case, my client is a quiet, henpecked sort of a guy, who sat there absorbing his wife's rage as if it were a very familiar experience, looking like he wanted to disappear. In the other, my client, who is a neurotic, anxious sort, began spluttering and hyperventilating, trying without success to muster appropriate retorts.*

*In both cases, my collaborative counterpart is a reasonable person who believes in collaborative law. We've been to trainings together, for heaven's sake!! But both of them just sat there like turnips, silent, while their respective clients unloaded, made accusations and thinly veiled threats, ranted, whined, until finally I could stand no more and I intervened.*

*Yes, I know, take a breath, remind everyone of the commitments they made at the first four-way, caucus, I know, I know.*

*But what about my collaborative colleagues? They both left it to me to speak up and stop the drama, and now both of their clients are furious at me for interrupting them before they were finished. And worse, my own clients are expressing doubts that there is any real meat to all that talk at the first four-way from the lawyers about collaboratively managing conflict and guiding the process.*

*... Abused Lawyer*

*Dear Abused*

Since you wouldn't have bothered to write if you just wanted me to say, "There, there, poor baby," I have to ask the obvious question. Who was doing what before the storm broke? Are you really a completely innocent bystander? Could it be that you share some responsibility for the outbursts, since lightning appears to have struck twice in your life this week? That's always a great analytic starting point when good cases and good lawyers go bad.

I ask because of course you are quite right: it was appallingly poor form for your colleagues to leave you dangling in the breeze. Managing outbursts and other bad behavior of one's own client is one of the key responsibilities of counsel that distinguishes collaborative legal practice from other dispute resolution models. Punting to one's collaborative colleague to do that job is a very bad idea unless it is a move you've planned together beforehand as a strategic option. So why did this happen twice to you this week? Could you perhaps have been unusually grouchy? Pushier or more combative than usual? If so, your colleague might have been slow to recognize it, or stymied about how to let you know without making things worse. That spectacle could make a client angry or upset, don't you think?

But maybe you are truly innocent. Only one way to find out, and it is the same way as if you are not truly innocent. You have to call your collaborative counterparts and have a talk, right away. What is needed here is to reinforce those process agreements.

# R A T O R

## Advice for the CaseLorn

Do we or do we not agree that agendas are to be honored? Do we or do we not agree that client outbursts are generally to be handled by counsel for that client? Find out whether you agree on these elementary process points, and then find out what went wrong.

There is another possibility. The stars and moon may be in bad aspects this week and the clients may be bringing exceptionally big dark shadows along with them to the four-ways. If the couples you are working with consider days like those you've described to be normal, you have got two cases that could really benefit from involvement of the Collaborative Divorce team coaching model. Then, next time one of those angry spouses starts to unload at a four-way, you and your collaborative colleague can look at one another, smile, and say, "It's time to call your coach, dear." Try it; you'll like it.

*....your pal, The Collaborator*

### You, Too, Can Be a "Dear Collaborator"

Join Your Colleagues in Dialogue  
On the  
Collaborative Practice  
ListServ!!

e mail contact: [collablaw@yahoogroups.com](mailto:collablaw@yahoogroups.com)  
to join: go to the website at  
<http://groups.yahoo.com/group/CollabLaw>

## IACP MISSION

The International Academy for Collaborative Professionals is a non-profit corporation whose mission is to establish the collaborative process as the preferred method of dispute resolution, thereby improving outcomes for children, families and professionals involved in the divorce process

## G O A L S

- T**o create networks among collaborative professionals
- T**o promote trust and teamwork among collaborative professionals
- T**o support the collaborative process by teaching collaborative methods
- T**o use research as a tool for improving current methods
- T**o develop and promote professional standards
- T**o educate the public about the collaborative process
- T**o support the formation of regional collaborative law and collaborative cross-disciplinary groups

# COLLABORATIVE GROUP DIRECTORY

## ARIZONA

Arizona Academy of Collaborative Professionals  
 Contact: Talia Katz, JD (602) 953-7688  
 Vicki Carpel Miller, CMFT (602) 953-6690

The Collaborative Law Group of Southern Arizona  
 Contact: Deborah Pratte and Natalie Wright  
 (520) 881-7500

## CALIFORNIA

A Better Divorce: A Group of Collaborative Law Professionals  
[www.abetterdivorce.org](http://www.abetterdivorce.org) (So. Cal.)  
 Contact: Kimberly Davidson (310) 378-1893

Bay Area Collaborative Law Group  
 Contact: Pauline Tesler (415) 383-5600

Coalition for Cooperative Divorce (Woodland Hills)  
[www.nocourtdivorce.com](http://www.nocourtdivorce.com)  
 Contact: Ronald Melin Supancic (818) 348-6700

Collaborative Alternatives  
 Contact: Nancy Ross (408) 866-9349

Collaborative Divorce/Collaborative Divorce Associates  
[www.collaborativedivorce.com](http://www.collaborativedivorce.com)  
 Contact: Peggy Thompson (925) 254-0597

Collaborative Divorce Lawyers of Marin  
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 Contact: Rodney Johnson (415) 457-9870

Collaborative Family Law Group of San Diego  
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Collaborative Family Lawyers (Ventura)  
[www.collaborativefamilylawyers.com](http://www.collaborativefamilylawyers.com)  
 Contact: David Schwartz (805) 981-1811

The Collaborative Law Association  
 Contact: David Weinberg (650) 329-0851

Collaborative Law Section of  
 The Sonoma County Bar Association  
 Contact: Laura Hawkins

Collaborative Lawyers of Northern California  
[www.collaborativeattorneys.com](http://www.collaborativeattorneys.com)  
 Contact: Linda L. Seinturier (530) 243-0253

Collaborative Negotiation Group (Sacramento)  
[www.divorceoption.com](http://www.divorceoption.com)  
 Contact: Hal Bartholomew (916) 455-5200

No Court Divorce  
[www.nocourt.org](http://www.nocourt.org)  
 (877) 366-2687

Peninsula Collaborative Family Law Group  
<http://www.collaborative-law.com>  
 Contact: Pamela R. Canter (650) 340-2880

San Francisco Collaborative Law Group  
 Contact: Jennifer Jackson (415) 397-1110  
[www.collaborativelawsf.com](http://www.collaborativelawsf.com)

San Mateo County Collaborative Law Group  
 Contact: Tim Martin (650) 579-1100

Solano Collaborative Law  
 Contact: Brenda Russo Woodsey (707) 523-0480

Sonoma Collaborative Law Group  
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Association of Collaborative Family Lawyers and  
 Divorce Professionals. (Winnipeg, Manitoba)  
 Contact: Rhonda Hercus (204) 956-1060

Collaborative Family Law Association of Ontario  
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Vancouver Collaborative Group  
[www.CollaborativeDivorcebc.org](http://www.CollaborativeDivorcebc.org)  
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Colorado Collaborative Family Law Professionals  
www.cocollaborativelaw.com  
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## CONNECTICUT

The Collaborative Divorce Lawyers Association (Fairfield, CT)  
www.collaborative-divorce.com  
Contact: F. Calafiore (860) 296-1555, Susan Smith (860) 297-0035

Connecticut Collaborative Law Group (Hartford)  
www.collaborativedivorcct.com  
Contact: Barbara K. Stark (203) 562-6622

## FLORIDA

Collaborative Family Lawyers Institute  
www.collaborativefamlaw.com  
Contact: Rosemarie S. Roth; Tel. (305) 596-7303

Collaborative Family Lawyers of South Florida  
www.collaborativefamilylawfl.com  
Contact: Iris Bass (954) 748-9797

Collaborative Lawyers of Southwest Florida  
www.www.collaborativelaw-swfla.com  
Contact: Stephen D. Thompson (941) 936-5225

Collaborative Family Law Group of Tampa Bay  
www.tampabaycollaborativelaw.com  
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## GEORGIA

Collaborative Law Center of Atlanta, Inc.  
www.collaborativelawatlanta.com  
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Collaborative Law Institute of Georgia (GA)  
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## ILLINOIS

Collaborative Law Institute of Illinois  
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## KENTUCKY

Northern Kentucky Collaborative Group  
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## MASSACHUSETTS

Massachusetts Collaborative Law Council (Boston)  
www.collaborativelawcouncil.org  
Contact: Rita S. Pollak (617) 566-2300

## MINNESOTA

Collaborative Law Institute (Minneapolis MN)  
www.collaborativelaw.org  
Contact : Stu Webb (612) 566 8800

## MISSOURI

Collaborative Law Institute of Missouri  
Contact: Karen Plax (816) 942-1900

## NEW HAMPSHIRE

Collaborative Law Alliance of New Hampshire  
www.collaborativelawnh.org  
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## NEW MEXICO

New Mexico Collaborative Family Law Group  
Contact: Gretchen M. Walther (505) 889-8240

## NEW YORK

Association of Collaborative Family Law Attorneys  
Contact: Sue Brunsting (585) 546-6448

Collaborative Family Lawyers of the Hudson Valley  
Contact: Richard Greenblatt (845) 562-0500

New York Collaborative Law Group  
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## NORTH CAROLINA

Raleigh, NC Collaborative Group  
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Triangle Durham Collaborative Family Law Group  
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## OHIO

Center for Principled Family Advocacy  
Contact: Jim Skirbunt (216) 781-6433

Collaborative Family Law Council of Central Ohio  
www.winwindivorce.org  
Contact: Sheila Chodosh (614) 235-1777

Collaborative Family Lawyers of Cincinnati  
www.collaborativelaw.com  
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Southwestern Ohio Collaborative Association  
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**OREGON**

Collaborative Family Lawyers of Oregon  
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Northwest Collaborative Institute  
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King of Prussia Collaborative Group  
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**TEXAS**

Alliance of Collaborative Family Lawyers  
www.houstoncollaborativefamilylaw.com  
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Collaborative Law Center of Rockwall  
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Collaborative Family Lawyers of Houston  
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Gulf Coast Collaborative Family Lawyers (Houston)  
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South Texas Collaborative Family Law Group  
www.TexasFamilyLawinfo.com/collaborative.htm  
Contact: Ben Chappell (210) 828-2058

**UTAH**

Collaborative Family Law of Utah  
www.collaborativefamilylawofutah.com  
Contact: Brian Florence (801) 476-3200

**WISCONSIN**

Collaborative Family Law Council of Wisconsin  
www.collabdivorce.com  
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**PLEASE CHECK IN!**

If your group is not listed,  
please send us  
[claborate@aol.com]  
the name and website of your  
group, and the name, address,  
telephone number and street  
address of your contact person

**PAST ISSUES  
NOW ONLINE**

Articles from out-of-print  
issues (1999 and 2000) are  
now available online at  
www.collabgroup.com!

**HOW TO GET YOUR 2001 FORUM NOTES**

The fall 2001 IACP forum featured morning and afternoon discussion groups around "hot topics" in Collaborative Practice. Each group was assigned a note-taker, who submitted his or her notes to our administrator. Because of the limited nature of this format, it was not practical to attempt to turn the notes into an article. The consensus was to make them available in note form to anyone who is interested. To get your free copy, please contact Paula Jackson at paulajacks@aol.com

# HOW WE DO THINGS HERE.

## Profiles in Collaborative Practice

*To celebrate the growth and diversity of the Collaborative Practice Movement and to provide guidance for new groups, each issue profiles collaborative practice groups across the United States and Canada in an effort to explore "How We Do Things Here". The editors will be contacting persons from more of our member groups; we look forward to learning about yours. In the meantime, here come the Canadians!*

### Vancouver Collaborative Separation and Divorce Group

*Nancy Cameron, LLB, Vancouver*

The saying goes in Vancouver that "lawyers are from Mars and therapists are from Venus". Part of our task, then, has been to learn about each other's culture and to learn each other's language. It is a task that continues to nourish us. We are grateful for the richness it has brought us, as well as for the growing sense of community we are developing. This is our story, so far.

#### THE OFFICIAL STORY ("The View From Mars")

The Vancouver Separation and Divorce Group had its genesis in early 1999. Two of our members, Nancy Cameron and Charlotte Gotschau, were introduced to the Collaborative process at about the same time, but from different directions. On a trip to Mill Valley Nancy met Pauline Tesler, who was gracious enough to have lunch with her and introduce her to the process. Charlotte met Stu Webb through the International Alliance of Holistic Lawyers.

Nancy, Charlotte, and a handful of like-minded lawyers began meeting twice a month and

drafted a participation agreement that is suited to Canadian cases. In June of 1999, Pauline, Stu and Peggy Thompson were attending an AFCC conference in Vancouver and offered to do a one day, multi-disciplinary training for us while they were here. "Be sure you invite some psychologists," Peggy instructed. That summer, our multi-disciplinary group was born.

The following year, five members of our group (two lawyers and three mental health professionals), as well as a legal assistant and our web master attended a Collaborative Divorce training in Minnesota. Later that year, five more lawyers and another one of our mental health professionals attended the Collaborative Divorce training in Phoenix.

Meanwhile, back in Vancouver, we expanded from our lawyer-only-cramped-in-the-board room group to a multi-disciplinary group that began meeting monthly over dinner. Our first task was to integrate the dinner tables, so that we did not have tables segregated on professional lines. We accomplished this (with the help of some Canadian wine) and have gone on to build a true, multi-disciplinary group.

We soon discovered that the success of our cases was going to build based upon our skills as collaborative professionals. During 2000, we formalized membership requirements for our group. The lawyers must have 40 hours of mediation training and two days of collaborative training. The mental health professionals must have 24 hours of mediation training, as well as two days of collaborative training. Our financial specialists require a two-day collaborative training, and all professionals must be members in good standing of their respective professional bodies.

Having decided that training is all important for our development, our next task was to make training more available to other professionals here in B.C.

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Since we are all passionate about the multi-disciplinary model, we grappled with an affordable model of multi-disciplinary training (given our current exchange rate). In March, 2001, we invited Stu Webb to lead a training in Vancouver. The training was sponsored by our provincial Continuing Legal Education organization. Stu was joined by a team comprised of members of our group that had attended Collaborative Divorce training in Minnesota and Phoenix. Over 70 lawyers and mental health professionals attended. We have since done a further two day training, and have other trainings planned in other communities in B.C. this year.

The Vancouver group has approximately 40 paid up members, and there are other groups in other B.C. cities. We meet monthly—with a dinner meeting in one month and a case conference in the alternate month. The dinner meetings are open to non-members as well as members. These meetings have a social component (that Canadian wine again), a business component, and an educational component. We have had a judges' night (where we invited interested local judges), and have had presentations on topics such as divorce ritual, mediation research, law 101 (for mental health professionals) and metaphors for divorce. The case conferences are closed to nonmembers. We use the case conferences to discuss impasses—what has worked, what hasn't worked, and to present a review of successful cases (with permission from clients).

Since the summer of 2000 we have had a board of directors which meets monthly to handle the nuts and bolts of business. We have a phone line, a (very) part-time secretary, a web page and a brochure. We are in the process of incorporating. We have some sub-committees that meet occasionally (training, membership, and promotion.) We have all

been committed to getting the word out, and done numerous radio and print interviews, and one television interview.

Our judges have been supportive—there is widespread belief that the parties are the best people to resolve their own family matters. We do not have rules of court that automatically track cases from the date of filing. We have no reason to begin court proceedings until we have finished a collaborative case (as divorces here are granted based on the amount of time the parties have been living separate and apart, not from the date of filing.) Our general practice is to complete the case with a separation agreement, and follow with a joint, uncontested di-

vorce. We do have some cases where people have withdrawn from litigation to enter into the collaborative process. In these cases, we sign a participation agreement (which effectively halts the litigation) and then, when the case is finished, file for an uncontested divorce.

Although our group began as a closed group, we have handled the "open or closed" debate by having membership criteria.

We are in the process of

gathering statistics from our members as to the number of cases we have done.

Julie MacFarlane, a professor at the University of Windsor, has received a major research grant from the Social Science and Humanities Research Council of Canada to study Collaborative Law over a three-year period. She is conducting a qualitative study using extensive interviews of lawyers, clients, and coaches in four sites; 2 in Canada and 2 in the US. Vancouver has been chosen as one of the sites. We expect to begin working with Julie in September 2002.

**In June of 1999, Pauline, Stu Webb and Peggy Thompson were attending an AFCC conference in Vancouver and offered to do a one day, multi-disciplinary training for us while they were here. "Be sure you invite some psychologists," Peggy instructed. That summer, our multi-disciplinary group was born.**

*A graduate of University of British Columbia with a B.F.A. in creative writing in 1984 and LLB in 1987, Nancy Cameron was called to the bar of British Columbia in 1988. Prior to law school, she spent ten years working in the field of early childhood education, including teaching child development and psychology. She is a family law practitioner, whose practice includes collaborative law and mediation. She is one of the founders of the Vancouver Collaborative Separation and Divorce Group, and is co-chair of the group. She has led and designed training in the Collaborative process, and has been a speaker in the area of Collaborative Law to groups across Canada.*

### THE UNOFFICIAL STORY ("The View From Venus")

*We Came, We Struggled, We Finally Got Together And We're Glad We Did*

*Susan Gamache, Ph D, Vancouver  
Psychologist, Marriage & Family Therapist*

At this juncture, as I look back on the journey we embarked on some three-plus years ago, it is easy to gloss over the difficult parts, and to bask in the wonderful feeling of connection and satisfaction I personally get from being a part of this multi-disciplinary group. The following is a candid review of what I remember of the process we went through to get to where we are now. My purpose in being candid is to encourage those who may be struggling to integrate the two groups. It can be tough.

As Nancy described, mental health professionals (divorce coaches) were invited to attend the workshop with Stu and others. I had actually met Stu previously at the International Alliance of Holistic Lawyers the previous fall. (When I told my neighbor I was attending this conference, he thought I'd said "The International Alliance of Ballistic Lawyers"....) After meeting Stu I was keen to get together with lawyers interested in working to improve marital transitions for families and asked a

lawyer if I might attend a dinner meeting. This request was declined. (*Side note from Nancy: The person who turned her down made a unilateral decision. We could have had at least two full meetings debating this, working towards some consensus.*) So it was not until after the one-day workshop that we began the work of bringing the disciplines together. We began to attend dinner meetings with the lawyers and also to meet on our own to develop the role of the divorce coach.

The dinner meetings were initially held at a restaurant at the court house. This was a much more formal professional environment than most of the therapists were accustomed to. Also, for therapists, the cost of \$30 per dinner was expensive even though the *very generous* Phyllis Kenney was paying for all the wine. Even the format was foreign; "therapist culture" in British Columbia does not generally include regular dinner meetings. To add to the awkwardness, people would sit at tables by profession rather than mixing, so few connections were being made. Even when people were expressly asked to change tables to integrate the two groups, no one moved! For me the break-through happened at one meeting when I refused to sit at either a lawyer only or coach only table. I sat down at an empty table, wondering if the group would let me sit there all night by myself. Thankfully this did not happen, and after many glasses of great red wine, we actually started to have some fun, discussing things that had nothing at all to do with family law.

The "coach only" meetings provided a great opportunity to get to know each other and to begin to start conceptualizing what this process might look like. At the beginning, everything was so new. Everything was to be discussed: licensure requirements, confidentiality, the contract, the referral process, billing rates, whether coaches had to be used or not. Perhaps most importantly, if we took the leap and made this big investment in time and training, would the lawyers actually work with us?

It also became very clear that the group of coaches was not as homogeneous as the lawyers. While all the lawyers belong to the same professional

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## To Our Subscribers

Welcome to the International Academy of Collaborative Professionals. On behalf of the board of directors, let me tell you how pleased we are that you have joined our ranks.

The Collaborative Review is IACP'S principal publication, published **twice a year** in May and October and focusing on matters of interest to collaborative practitioners. Articles in the Review address specific challenges faced by collaborative professionals and provide tools, techniques and resources to help advance and improve collaborative practice. The Review also serves as a voice for subscribers in which they can publish comments, questions and articles of their own that are of general interest to readers. The Review is the only publication in existence that produces resources of this kind for collaborative practitioners and that provides a forum for practitioners from all over the world.

Your subscription secures your membership for the year 2002, which entitles you to all issues of the Review for 2002, notices of upcoming events, discounts on forums and trainings for the year 2002, a link to our website for your group, and the like. In that this is a volunteer organization, we don't have the resources to track each membership by the date that member joined IACP. Therefore, no matter when you join, you will receive all issues for the year you have joined and we will then ask that you renew annually. Additionally, if you would like copies of all 1999-2001 issues, please send \$30 to Jennifer Jackson at the address posted on the cover.

The Review, together with the IACP webpage, is serving as a highly effective networking tool; Collaborative Law groups from all over the world are beginning to check in and be counted. ***Please be sure that we have your group's name, address, website, e-mail and the name of its contact person to include in the Review and on the website.***

We really look forward to learning about (and publicizing) your events, linking to your Website(s), receiving your letters, ideas for questions for the Dear Collaborator column, and articles and suggestions about how we can better serve the collaborative community. *Ed.*

## Profiles

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group and have completed a similar program, coaches' training varies tremendously--different schools (counseling psychology, clinical psychology, social work) different approaches (psychodynamic, behavioral, long-term, brief) different populations (i.e., adults, children, couples, families). It included therapists whose professional designation could be psychologist, clinical counselor, social worker, play therapist, school counselor, etc. These different groups also frequently had substantially different billing rates.

When I think back on this now, I can remember a lot of uncertainty. Given that we were generally therapists and not the type of mental health professionals that would customarily do custody and access reports nor act as expert witness, we did not have pre-existing working relationships with the lawyers. While it was very exciting to be involved in this legal paradigm shift, it also represented a huge leap of faith.

Somehow we persevered. For some time the coaches continued to meet as a separate group as well as together with the lawyers. As we clarified issues mentioned above, the separate meetings no longer seemed necessary and we met only with the larger group.

Traveling to Minneapolis to do our training really seemed to clinch it. As Nancy described, seven of us went as a group (lawyers, coaches, legal assistant and webmaster). This was a great opportunity to "bond", to relax and tell goofy stories, and to find out just who these people were that had been sitting across the table at the endless dinner meetings. During the trip it seemed that quite spontaneously, we each told the story of why we were so passionate about the Collaborative approach. For each of us there was a personal history in which a divorce played a huge role. By the time we returned to Vancouver, we truly felt ready to begin our first casefile as a team.

Many in the initial group of therapists have not continued. New people have joined us. This type

of work does not appeal to all therapists. Just what type of professional orientation seems most well suited to this practice is perhaps a topic for another article. However, for those of us who have stayed, we have formed strong working relationships, not to mention great friendships with each other. The close working relationships we now have provide a rich and satisfying environment for the difficult work that the practice of Collaborative Law can be. Now we actually look forward to getting together and look to each other for support and encouragement on difficult cases. We've even had our first Christmas party and are looking forward to our first year-end get together.

Personally, I am so grateful to have been in the right place at the right time with the right stuff to be participating in this massive shift in family law. My personal history includes my parent's very difficult divorce (yes, another article to be sure). I feel deeply honored to have the trust of my clients to help them through this difficult passage so that the legacy of this divorce for their children is something they can be proud of.

*[Please see page 9 for Dr. Gamache's Professional Bio]*

## Collaborative Lawyers of Saskatchewan, Inc.

*Brad Hunter, Saskatchewan*

I first became interested in Collaborative Law in February 2001 through a file referral I made to a Collaborative Law lawyer, Janis Pritchard, in Medicine Hat, Alberta. When Janis recommended that we proceed as a Collaborative Law case, I was cynical, based on my general assessment of attempts to change divorce law practice. Janis assured me that it was a very effective way of resolving disputes; I viewed Janis to be a very effective litigator and effective family law lawyer and gave her views great credence.

I then began investigating Collaborative Law. Early in March 2001 I discussed this with the Dean of our Family Law Bar, who was im-

mediately interested. Over the next five months we worked to develop interest in our Collaborative Group and to develop goals and objectives for it, investigate training, opportunities, systems and the like.

We established, informally, a goal of making Collaborative Law widely available for family law clients. The Regina/Moose Jaw area was the area we initially wanted to target. There are approximately 250,000 people in our trading area, and around 350 to 400 lawyers in private practice. The Family Bar, however, is not particularly well defined. Very few people handled an exclusive family law practice and most of the family law was done by people who had general practices; family law made up less than one half of their practice.

With these factors in mind, we decided that we had to make Collaborative Family Law available to all lawyers and not limit it to simply specialists in family law. At the same time, if we wanted to make it successful, we needed to have as many lawyers brought into the process as possible. Based on what we have been told about Medicine Hat, it was obvious, on an intuitive level, that Collaborative Law would work in a large number of cases. The Medicine Hat people were very helpful forwarding us their precedents, talking to us and coaching us about how they established their group.

Recruiting lawyers was done on a one-on-one basis; we then held a couple of group meetings, circulated information and materials - such as Pauline Tesler's article and a paper written by my colleague and me, putting our

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*There ain't no rules around here!  
We're trying to accomplish something!  
.....Thomas A. Edison*

## Profiles

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own personal credibility on the line.

With respect to developing training requirements, we received very helpful advice from the local government agency which was responsible for mediation services provided in our province. At the outset, we decided to require 20 hours of training on Interest-Based Negotiation and two days of training on Collaborative Law. The Interest-Based Negotiation training was held on September 13, 14 and 15, 2001 and the Collaborative Law training on September 29 and 30, 2001. We also had a commitment from our members to take a more advanced course on Interest-Based Negotiation about six months after we had started. We just concluded that second leg.

Our trainers in Collaborative Law were David Carter and Janis Pritchard from Medicine Hat. We chose them for a variety of reasons, but principally because of their fairly obvious success and the fact that Medicine Hat and Regina shared a lot in common in terms of the types of work we have and the types of lawyers in our community. The training process was enlightening. We had prepared everyone for a change prior to the Interest-Based Negotiation training, but the true “paradigm shift” took place during this training. It was very effective in exposing our underlying weaknesses in negotiation strategy. For me it was a personal revelation about how bad a negotiator I was, how distrustful I was of others and how I believed I could win a negotiation by withholding information. None of it was very palatable. When David and Janis came to do our training, we were champing at the bit to find a way to take this new-found view and make it practical. The training was excellent, but it was abundantly evident to everyone that we all had much to

learn at a very practical level.

In October 2001, we started marketing, which included a news conference, reception, sending out letters and e-mails to let people know what Collaborative Law was. We received excellent press coverage and the Chief Justice of our Court of Queen’s Bench gave a television interview endorsing and supporting Collaborative Law. We slowly started to sign up contracts. We found we were using collaborative principles and Interest-Based Negotiation concepts extensively on all of our other files, including the ones that had been highly litigious.

By January 1, 2002 it was quite evident that a major shift was under way. First, our court lists were starting to drop in a dramatic fashion. We have motion court each Wednesday and Friday in Regina. The number of motions on the list dropped precipitously (by at least half) and it also became obvious that people who had taken our Collaborative Law training rarely, if ever, showed up against each other in Chambers. These cases were being primarily driven by lawyers who did not accept Collaborative Law, or where one or both sides was self represented.

We had our follow-up training of a two and a half day Interest-Based Negotiation training in April, 2002. Of our original group of about 25 or 26, 20 were able to attend. We spent the first part of it discussing the number of casefiles we had been involved with, the successes and the failures, problems we were having and information we needed, and the work we needed to do on our skills.

From those discussions it is apparent that somewhere between 120 and 150 clients have signed on to Collaborative Law in our community in the last six and a half months. This rep-

resents about 60 to 75 couples. It was also clear that Collaborative Law and Interest Based Negotiation had been used in many other cases where no formal agreement was signed. Our most senior male family law practitioner stated that for the first time in his 35-year career, he had not put on his Q.C. robes since the beginning of the year. Our senior female family law practitioner had not been to court at all. The lawyers were all keenly interested in doing more Collaborative Law. Our clients are generally much more satisfied than they were before.

We saw that the pace of signing up casefiles has increased dramatically, and that we have a real momentum to our collaborative process. We discussed our roles as collaborative lawyers and how it affects our relationships with our clients once the collaborative casefile participation agreement is signed. It is very clear that the transparency of the process - ensuring there were no secrets between the lawyers and the clients - was absolutely essential to making Collaborative Law work. We discussed transformative ideas (*Bush* and *Folger*) at length, as well as drawing the line between counseling and negotiation. It became abundantly clear that we needed to do significant work on our communication skills and “reframing”. There was much sharing of techniques and the like. This was not a deficiency in our training but rather an indication of the types of skills that need to be developed at a very practical level.

Over the course of the last six months we have also held three other training sessions as part of our group, the Collaborative Lawyers of Saskatchewan Inc. Right now, Collaborative Law is a common form of practice in the Regina/Moose Jaw area in Saskatchewan and I suspect will displace most other methods of practice in family law. In addition, I have no doubt we will be using it in general civil matters in the very near future. The number of lawyers qualified

has increased from about 25 to over 40 in our community and it has expanded into several new communities as well. Right now, a hundred lawyers in our province have some training in Collaborative Law and 85 of those people are members of the Collaborative Lawyers of Saskatchewan Inc. This means one of every ten lawyers in private practice and legal aid has some Collaborative Law Training. We will continue training until the demand for it dries up

I do not think there is anything special or unusual about our community that would make Collaborative Law work any better here than anywhere else. Because of the huge geographic distances and the relatively isolated nature of some of the areas of our province, it is very difficult to organize; nonetheless, we have done it, and done it successfully, even without a large family Bar and the training resources that larger communities enjoy.

The key thing is to have a goal. Medicine Hat has proven that making Collaborative Law “mainstream” is quite attainable and our experience in Regina suggests that this is not a fluke but something that is readily transferable to other communities.

*Brad Hunter, a partner in the firm Hunter Miller, is a frequent lecturer and trainer in Collaborative Law and Interest-Based Negotiation. He is President of the Collaborative Lawyers of Saskatchewan, Inc. and former chair of the Canadian Bar Association National Family Law Section. He was on the organizing committee for the National Family Law Conference in Victoria B.C., and headed the Saskatchewan Bar Admission Course in Family Law from 1988-1998.*

**“Profiles in Collaborative Practice”  
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[Contact person for the group or group office]:

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\_\_\_\_\_

Tel number \_\_\_\_\_

Website for group: \_\_\_\_\_

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## IACP's 2002 NETWORKING FORUM: A TRAVELOGUE!

The International Academy of Collaborative Professionals presents its annual forum for education and networking at the fabulous Moody Gardens ([www.moodygardens.com](http://www.moodygardens.com)) in Galveston Island on the Gulf Coast of Texas on November 1 and 2, 2002.

Participants can easily reach this conference by taking a flight to Ellington Airbase, which is continuation of their Continental Airlines flight into Houston's Bush Intercontinental Airport. You will then be shuttled directly to the spectacular pyramids of the world-renowned Moody Gardens. Or participants may arrange to fly directly to the Galveston Airport -- which is part of the Hotel complex -- and be driven over to the forum hotel by their Texas hosts. The state-of-the-art hotel rooms are at a convention rate of \$129 per night (409-741-8484 or 1-800-582-4673). Members of the group who arrive on Thursday evening will be greeted with a small cocktail reception at IACP's two hotel suites. Each participant may then enjoy individually the many attractions of the hotel complex including:

- ✓ **RAINFOREST PYRAMID-** Discover a full acre of exotic butterflies, birds, fish and plants;
- ✓ **IMAX 3D THEATER-** Slip on your 3D glasses! Reach out and touch amazing images on a 6 story screen;
- ✓ **DISCOVERY PYRAMID-** Explore space at the new Mars Habitat Exhibit;
- ✓ **PALM BEACH-** Enjoy the fresh water lagoon and white sand beaches;
- ✓ **THE COLONEL-** Cruise Offetts Bayou aboard an authentic replica of an 1800s paddlewheel boat
- ✓ **THE AQUARIUM-** Visit a huge pyramid of the oceans of the world; and
- ✓ **THE TEXAS AIR MUSEUM-** Tour a collection of vintage aircraft right on the hotel grounds.

**Friday:** In the morning, the participants will convene in various workshops; in the afternoon, your Texan hosts will shuttle you to the Crazy Cajun for a Cajun lunch provided by owner Sonny Paine and then a tour of the Lyndon Johnson Space Center. Or you can join in the golf tournament at the Galveston Country Club. There are numerous attractions right on the Island: the Train Museum, the Oil and Gas Offshore Museum (a real offshore rig), The Strand (a turn-of-the-century port city shopping district), the Seawall, a tram tour of the whole Island, and the Moody Mansion, to name a few. Friday evening, **THE TEXANS MEET THE "PIRATES"** (a/k/a anyone not from the "Great State of...") on a 1870 schooner named the Elissa. There will be cocktails, music and dinner on the boat and the adjacent pier which houses a museum featuring historical and restoration pictures/video of the boat. (In case of rain, the entire party will be in the museum.)

**Saturday:** In the morning, your hosts will serve a full breakfast in the hotel meeting rooms. During breakfast, we will hear the story of The Great Storm of 1902 that virtually destroyed the island, featuring a Power Point presentation of the storm. After the morning meetings in the hotel, your hosts will put on a "Real Texas Barbecue" around the pool (weather permitting); you will hear from Steve Smith, the former CBS news anchor in Houston, who will tell anyone willing to listen where the best fishing holes are in the hotel area. In the afternoon, the participants will attend the rest of their meetings and enjoy an afternoon snack. Saturday night reservations are being made at several of the Island's restaurants (varying price scales); participants may choose to go collectively to these restaurants or sample one on their own.

Register early and earn a chance to win one free day's use of the Moody Hotel Spa (compliments of the hotel)!

*....see y'all in Galveston!  
your pal, The Collaborator*

## Profiles

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### Collaborative Law Association (Winnipeg, Manitoba CANADA)

*Rhonda Hercus, Winnipeg, Manitoba*

Collaborative Family Law first came to Winnipeg, Manitoba in November of 1998. I had read an article about Stu Webb's innovative concept in May of that year and was immediately enthralled. I contacted Stu and then spent part of my August vacation driving down to Minneapolis to meet with him. That fall I gathered together a small group of 10 lawyers, a psychologist and a mediator - people I thought might also embrace Collaborative Law. Stu graciously agreed to come to Winnipeg and introduced us to the concepts of Collaborative Law.

The enthusiasm of that original group was immediate. However, we tried a few cases and quickly realized that we needed more training, both in Collaborative Law and in conflict resolution. By the spring of 2001 we had completed both, and commenced our Collaborative Law cases in earnest. Progress was slow at first. The main difficulty was finding enough collaboratively trained lawyers to represent the other party.

Fortunately for our Collaborative Law movement, Legal Aid Manitoba became heavily involved in Collaborative Law at this time. A group of 15 lawyers, consisting of both in-house legal aid counsel, and private bar members with large legal aid practices, took the Collaborative Law and conflict resolution training with us. Legal Aid Manitoba then launched a year-long pilot project in Collaborative Law, commencing in May 2001.

Gil Clifford, the senior legal aid in-house counsel in charge of the pilot project indicates that as many cases as possible are referred to the collaborative process. In addition, the emphasis has been on using Collaborative Law in the more complex cases. Legal Aid Manitoba has seen these cases resolve in an average time of 4 to 7 hours in total, and with more client satisfaction than typically found in traditional adversarial litigation. One

enthusiastic legal aid lawyer has conduct of over half of the 100 collaborative law cases assigned to legal aid staff lawyers. Approximately 30 cases have been successfully completed to date.

The pilot project has also caught the attention of members of the private bar who previously have refused to handle legal aid domestic cases. In their desire to devote a larger portion of their practice to Collaborative Law, fourteen of these lawyers have agreed to handle legal aid collaborative cases, while still refusing to handle traditional legal aid litigation cases. Over fifty lawyers in total, both legal aid and private bar, have now completed their collaborative training with another twenty on the waiting list for the next training. The problem of finding collaborative counsel for the other spouse has greatly lessened, and some lawyers, including myself, are able to focus the majority of their practice on Collaborative Law.

The main challenge has been to get word out to the general public. Members of our Collaborative Law Association have given talks to various groups, written articles, and appeared on local television shows. A recent feature article in the Winnipeg Free Press has engendered numerous phone calls and we are finding that clients are now calling and asking specifically for collaborative lawyers to help them resolve their separation issues.

It was slow getting started, but Collaborative Law is definitely here to stay in Winnipeg!

*Rhonda Hercus is a lawyer with Monk Goodwin in Winnipeg, Manitoba, Canada. For the past 14 years she has practiced exclusively in the area of family law and her practice is at present, 90% collaborative. Rhonda introduced collaborative law to Manitoba in late 1998 and is presently the chair of the Association of Collaborative Family Lawyers and Divorce Professionals. She is a member of the International Academy of Collaborative Professionals, International Alliance of Holistic Lawyers, Family Mediation Canada, the Association for Conflict Resolution and the Canadian and Manitoba Bar Associations and is on the Board of Directors for Family Mediation Manitoba.*

# FROM THE COLLABORATIVE CORNER

By Stu Webb, J.D., Minneapolis, Minnesota

*The acknowledged “Godfather of Collaborative Law”, Stu Webb is co-founder of the Collaborative Law Institute in Minnesota and a frequent writer/lecturer on Collaborative Practice. A practicing Buddhist, his avocations are jazz, backpacking, reading and offering us the benefit of his wisdom each issue, for which we are indeed fortunate and grateful.*

Have you ever wondered where our collaborative clients come from—and our collaborative professionals as well? One answer is provided by a fascinating book entitled *The Cultural Creatives* by Paul N. Ray and Sherry Ruth Anderson. The authors are a team of market researchers who drew upon thirteen years of research studies of over 100,000 Americans. They discovered that since the late 1960s, an entire new subculture of Americans has been and is emerging. They call this group the “Cultural Creatives” and they assert that this group currently comprises 26 percent of adult Americans—50 million people who have made a comprehensive shift in their world-view values and way of life!

A typical member of this subculture, according to one reviewer, “feels there is more to life than money and materialism, loves nature, hates advertising and feels alone in [his/her] efforts to make the world a better place for all.” *David Korten*. The authors describe the broad traits of cultural creatives as authenticity, engaged action and whole process learning, the importance of women and altruism, self-actualization and spirituality.

The authors identify and describe the other two large subcultures in America as being the Moderns and the Traditionals. The Moderns are the predominant subculture found in government, business, banks, professional sports, etc.: the environment we “swim” in. The Traditionals, comprising about 25 percent of our populations, are harder to typify, but the authors state that their values and beliefs include: the patriarchal family dominates, “Feminism” is a swear-word, family, church and community are where you belong, customary ways of life should be maintained, regulating sex is crucial, freedom to carry arms is essential, and foreigners are not welcome.

The striking feature of the Cultural Creatives is that most members assumed they were alone in their beliefs—little dreaming that they were part of a 50 million-person constituency.

Ray and Anderson note that new social movements are arising which reflect the value of Cultural Creatives and this could be the start of a shift from the Creatives “feeling alone and powerless” to experiencing the power of shared beliefs. Which gets me back to my initial questions. This book made it clear to me that Collaborative Law, Collaborative Divorce and collaborative professionals are examples of new configurations empowered by individuals experiencing the views and beliefs described as held by Cultural Creatives. I recommend this book highly for the insights it will lend to you and your clients.

*Watch out when you're  
getting all that you want:  
only hogs being fattened for the  
slaughter get all they want*

*..... joel chandler harris*

..... 



The Collaborative Review of the  
 International Academy of Collaborative Professionals  
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