

## Where Are You on Your Collaborative Journey

Known forever in family law is litigation, the often-quick fallback to failed lawyer-managed negotiation. Negotiations fail (if attempted at all), then go to court and duke it out in front of the judge and may the best parent win.

Then along can Stu Webb from Minnesota in the early 1990's and he changed all that.

With a simple letter he indicated he would no longer litigate yet continue to take on family law cases. The proviso was, he wouldn't go to court.

He invited interested and like-minded colleagues to join him at a table to simply discuss concerns and generate solutions along with their clients. Therein was born Collaborative Family Law.

Absent the concern for litigation there was no more need for parents to prove who was the bigger scoundrel to get the bigger piece of the pie, be it time and responsibility for the kids, or a greater share of the finances. People were freed to settle things on a go-forward basis, thus no longer sully already fragile relationships yet indeed promoting improved communication and problem solving.

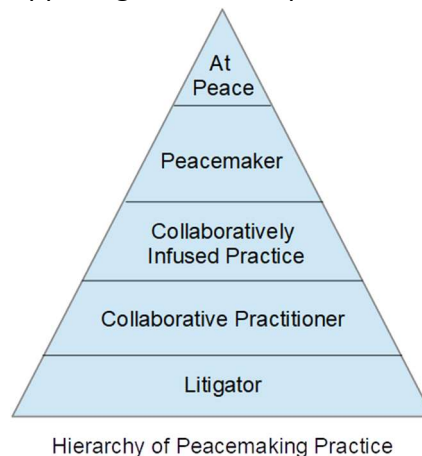
Fast-forward three decades and that shift in thinking has spawned a movement that has spread world-wide. Now, not only are there lawyers trained and committed to the Collaborative process, but so too a legion of mental health and financial professionals whose service helps address the issues commonly faced with the addition of their special expertise. The Collaborative table has grown. Together they join under the umbrella of the International Academy of Collaborative Professionals (IACP) with chapters in many jurisdictions throughout the world.

Given the growth, it is as if this movement has also, for some, created a felt need to obtain the training so they can simply add the service to their offerings however without truly integrating the meaning of the practice into their work. Thus, there are now many Collaboratively trained lawyers who range in commitment and embracing of the approach to

those who are there in name only. The latter use the service to create a bait and switch almost as a means to have another referral stream feeding their traditional old litigation practice.

At the heart of the Collaborative movement and practice is what is referred to as "the paradigm shift".

The paradigm shift is a move away from seeing cases in the binary of win/lose or counsel and opposing counsel, or petitioner and respondent.



The paradigm shift has clients seen as people together in a struggle, seeking to morph into a new order that enables both to proceed peacefully into the future in their

mutual interest.

It is as if there is a hierarchy to the paradigm shift. It begins with the binary and litigation-oriented professionals. They are positional and services are brought in on a one-sided bases to bolster one's case. The goal is winning. Of these litigators, they may or may not have had Collaborative training, they remain entrenched in a binary way of viewing cases and in their litigation response.

Next up the hierarchy are those who see the utility of working together and avoiding the oft destructive outcomes seen in litigation. Not uncommonly, these folks experience an exasperation with litigation and appreciate there must be a less conflictual way to help people reorganize their lives, families and finances. These folks have accepted the process, but there too may be faced with a new binary – Collaborative vs. litigation. They see services as discrete. You choose one or the other.

There may be difficulty in promoting the Collaborative approach over litigation in view of the disqualification clause. They may as yet have

difficulty explaining that the qualification clause keeps them committed to seeking a peaceful resolution; that it creates for the client the conditions where the lawyer is no longer themselves in a conflict of interest given that litigation on a case by case basis is more lucrative. These practitioners have yet to experience that higher volume of clients and less receivables, not to mention happier clients and less personal stress, pays greater than litigation when fully committed.

Assuming they continue with membership in IACP and other collaborative organizations, continue to attend training, develop relationships with persons who can act as mentors, these folks may then transcend to a place in their practice where the Collaborative approach and a peacemaking mindset infuses their entire practice. Even if a case is in litigation, one can still resist bringing oil to the fire; one can still remain civil; one can still propose mutually beneficial solutions. Even if to look good strategically in the eyes of the court, playing nice doesn't mean being a patsy and not presenting a case. It just means it can be done while seeking to still have both persons and their resources remain intact. With this mindset, the practitioner has entered the level of Collaboratively infused practice outside of the disqualification clause.

Beyond one's practice lays a whole world, a world with much turmoil. As one continues to experience the benefit of peaceful transactions aimed at resolving conflict, one's eyes can be set beyond one's practice. It may be neighbor to neighbor, between one's own family members, within or between communities or up to a global scale. Our interest in peace and our awareness of conflict's harms grows. We choose peace and seek to act accordingly within the world beyond our practice.

Our own inner demons remain.

We may have reviewed and/or been confronted by our demons over the course of our practice.

Triggered by the issues addressed by the people we serve, we realize we too are borne human. With that, we seek to work on ourselves, to deepen our

awareness, mindfulness, and impact on others. We learn to modulate our own behavior, aware of impact and seeking well for others ahead of ourselves.

As we develop our awareness, learn to perhaps forgive others and certainly ourselves, we too may find peace. It is that peace we can then carry into the room where others are not in peace. We are there that they may borrow our peace, our calm in their storm so as to provide a sense of safety enabling their own self-reflection. With that we serve higher and higher goals, some yet not imagined.

We seek to be peacemakers who themselves are at peace.

The Collaborative journey doesn't provide a destination, just a view of where one may go and to do so at each person's pace and discretion. The journey is not linear and not necessarily hierarchical.

Stu Webb opened a door. Whether one walks through and where one goes remains up to them.

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Gary Direnfeld, MSW, RSW is a Canadian Social Worker in private practice. He is recognized from his 65 episodes of the hit show Newlywed/Nearly Dead, to over 650 columns as the parenting expert of a major metropolitan newspaper, to more than 500 media appearances, to his book, Marriage Rescue: Overcoming ten deadly sins in failing relationships. Courts in Ontario, Canada, consider him an expert in social work, marital and family therapy, child development, parent-child relations and custody and access matters. He served as the first family professional for the Ontario Federation of Collaborative Professionals. He was also the only Canadian invited to a consultation exercise at Hofstra law School for the development of the Uniform Collaborative Law Act (US). He discontinued his litigation support practice as well as work as a family arbitrator in 2015. He is a full-time peacemaker, counselor, trainer and speaker. He speaks at conferences and workshops throughout Canada and the US and helps family peacemakers grow their practice.

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