

COLLABORATIVE PROCESS IN PRACTICE

LÉA LAPOINTE | SASKATCHEWAN MINISTRY OF JUSTICE



I am proud to be among the approximately 190 lawyers and more than 20 other mental health and financial professionals in Saskatchewan who have completed collaborative training in Saskatchewan.

I completed my formal training on a blustery Valentine's Day in Regina. Despite the snow, ice, and winds of the day (and the closure of the Highway 11 between Regina and Saskatoon), I was optimistic and excited about growing my collaborative practice as a counterpoint to my other areas of legal practice.

I must confess: despite my keenness, my phone did not begin to ring off the hook with new clients seeking my skills in collaborative process.

The reality is that it takes two parties – and two counsel – to engage in the collaborative process. When more than half of the work that crosses my desk involves counsel who are either not collaboratively trained or not actively engaged in collaborative practice, it does impact whether the collaborative process is a potential fit for my clients.

I believe the collaborative process will, however, grow in popularity in Saskatoon as it has in other Canadian and international communities.

Given the choice, I would have chosen collaborative process to work through the issues in my own separation and divorce. (Prior to becoming a lawyer, I had a marriage that ended in divorce in 2004. I am since happily remarried, with two beautiful sons from my second marriage.)

Even though my Interspousal Agreement provided me with outcomes that were reasonable and fair, I had full financial disclosure, and I had independent legal advice, something was missing.

What I understand now is that some of my interests were left unaddressed, specifically my procedural interests. None of my current insights would have likely changed the substance of my Interspousal Agreement, but it may have changed the process of how I reached that agreement.

We all know that there is no one-size-fits-all process for “untangling” a spousal or parenting relationship and for sorting out the rights and obligations that flow from that relationship. Hence, the current statutory requirements for lawyers to provide clients with information about the process options available to them, i.e. litigation, mediation, negotiation, and collaborative law. People need an opportunity to understand the differences between the processes, and, perhaps more meaningfully, to understand how these differences may impact them as individuals and as parents.

I invite the legal profession in Saskatchewan to consider how a traditional approach to providing legal advice may lead family law clients to be litigious. I believe that traditional litigation advocacy trains our clients to “build a case” against the other party, usually the other parent. Litigation advocacy neither trains the parties, nor builds the skills necessary, for the parties to deal with their problems in any other way. If parties resort to a chambers application to resolve an interim

parenting schedule, they have now learned to build a case, hire a lawyer, and head to chambers as soon as there is dissatisfaction with the parenting schedule.

I submit that this training occurs even in the context of four-way meetings and negotiation where the threat of litigation looms large over the process. Parties and their lawyers may be negotiating by day and preparing to litigate by night, as a way of ensuring they are ready to jump ship if negotiations break down.

I believe that the collaborative law process has the potential to train clients to resolve their issues differently. It offers an opportunity for clients to better understand themselves and their interests. It trains participants to brainstorm potential solutions and to measure those potential solutions against their interests. If the parties agree that their primary interests are to be fully engaged and involved parents and to love and support their children through the children's own experiences of the separation and divorce, those parties can then learn to measure their options against those interests, and they can then discard options that do not fulfill those interests.

In the collaborative law process, the parties are not collaborating by day and litigating by night. There is no threat of litigation looming over the parties. Their energies and time are potentially freed up to focus fully on reaching a negotiated agreement that can address everyone's needs.

Continued on Page 24...



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COMMENTARY

Continued from Page 23...

If parties settle their issues through a collaborative process and a new issue subsequently arises between them, their prior collaborative experience will not likely have them heading immediately to chambers. While the parties may return to the collaborative process, they may also have learned how to deal with issues themselves. They may reconsider what their interests were in the first place, what they are at the present time, and choose a process that meets their interests.

Collaborative professionals know that it is not just “easy” files or low-conflict files that are a fit for collaborative process. Collaborative process is well-suited for all types of disputes and clients, but it is generally a fit for parties who want to have a hand in controlling the outcome of their dispute, rather than handing it over to a third-party to make a decision for them. The potential involvement of mental health coaches, financial neutrals and other professionals as part of the collaborative team allows for a uniquely client-centred process that can accommodate varying emotional states and power or knowledge imbalances. This is part of the value of the collaborative process: it can be customized to meet the unique needs and interests of every party, while focusing the parties on negotiating solutions in a fully informed and supported environment.

I look forward to my collaborative practice growing, and perhaps I will be in a position to write again for *BARNOTES* in the future to share observations of how clients’ process choice may influence their future behaviors. 

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