

Interdisciplinary Collaborative Practice (Opening Address)

Association of Family and Conciliation Courts (Workshop)

My name is Nigel Macleod and I am the moderator of this collaborative law forum. Sometimes we will refer to “collaborative law” and “CFL” (collaborative family law) interchangeably. Today's session will highlight the Vancouver model which is a multi-disciplinary system. Many people refer to this model as *collaborative divorce** (“*collaborative divorce*” is a registered **service mark**) or the team approach. Nancy Cameron and Dr. Susan Gamache will be speaking about the Vancouver experience in the middle portion of our workshop. In the first section, we will provide all our panelists with an opportunity to provide their views with respect to CFL within the field of family law and dispute resolution consistent with this conference theme. With us today are leading authors, academics and dispute resolution specialist respectively in the persons of Professor Jon Lande, Richard Shields and Jon Snipper .So, this first section will deal with collaborative law and perhaps the collaborative divorce model within the evolutionary context of ADR. I should point out that the working title of this session was originally entitled *Collaborative Law: ADR's Kissing Cousin or Twisted Sister*. That never made it by the conference committee. So, we were reframed as the forum which sounds a little bland or generic but I can assure you these panelists and the subject itself guarantee controversy. So, after the general overview, we will work in the specific Vancouver presentation and the coffee break and then finish off with an informed discussion of presenting issues, CFL strengths and weaknesses. My job is to facilitate the conversation particularly with the view of deconstructing to the underlying theory.

I remember in the mid-90's attending a general information session with Pauline Tessler in California and she started by asking for people to put up their hand if they had collaborative law in their jurisdiction and I was uninformed about the process - I didn't know whether Ottawa or Ontario was on the map. Certainly, Pauline's outreach of Stu Webb's invention had already stretched to Vancouver where Nancy Cameron and Dr.

Gamache were teaming up in an organization created for the purpose of service delivery of this new and dynamic resolution option for Canadian families engaged in the divorce and separation experience. Collaborative Family Law is now available in many but not all Canadian municipalities. We can estimate a practicing community of over a thousand CFL lawyers across this country dedicated to responding to our public's demand for another way; and appropriate dispute resolution model to process their legal settlements as they, as we, reject the adversarial practice of family law as a necessary foundation for conflict resolution or comprehensive separation and divorce settlement.

I would like to provide a very brief statement about the process and then I will ask each of the panelists to open up our conversation. We may not all agree and that is the beauty of the AFCC experience. What better place to advance multi-disciplinary collaboration of the highest professional standards and in the duty of care consistent with the kid's sake than one of the foremost bodies of inter-disciplinary intellectual dialogue.

I am a collaborative lawyer and I have a background of 23 years of practice as a lawyer and 13 years as a mediator. I have always felt safe in challenging my professional thinking at these conferences. So, we're back to AFCC as our safe harbor and the home of creation, caring and community. We collaborative lawyers (many of us nurtured in the ACR - FMC - AFCC family) have returned here as refugees of reason. We are reclaiming justice. It is certainly not to be found in the *status quo* litigation/negotiation model, energized by threats and deterrent escalation. The consequence is injustice and the product of conflict (now professionally legitimated and socially acceptable) wrecks a devastating legacy on the family and particularly on the children. Lawyers' inflammatory participation in these institutional conflicts as litigation gladiators combined with their clients' sad spectacle constitutes a dysfunctional parenting model as outdated as a Statement of Claim family pleading.

Justice is not confined to legal reasoning. It is not merely the application of rights and remedies; it is the existence of respect and harmony, healing and reconciliation, peace and prosperity. Collaborative law is more than an ideal. This is an evolutionary phase in

the development of real law for real people. We have responded to the challenge of AFCC and the Canadian bar, our distinguished colleagues of barristers and solicitors at law, to respond to an innovative and professional manner to the challenging needs of Canadians. Since CFL theory 101 states that collaborative divorce is collaborative law, the deeper question is whether we can now openly and notoriously proclaim that the point of service delivery is assembling health and wellness as opposed to legal services *per se*. When we speak about conflict as a family disease, aren't we really positing CFL as a population health resource.

As you may know, collaborative family practice represents the third major process option for separating or divorcing spouses as CFL joins family mediation and the traditional litigation/negotiation models as professional resource structures enabling family law resolutions. We are pioneering a new solicitor-client relationship, which creates a special role for lawyers - not as adversarial litigators but negotiation coaches and information resources while providing professionally insured legal protection. Clients now own their process and take the lead while being assisted by lawyers recapturing their classic role as counsel --- generating options which include the law model but certainly addressing and advocating the primary interest of the clients in a critical path through post-marital transition. We are also settling some dangerous territory with respect to demarcating professional boundaries within the CFL model.

We will elaborate intake procedures in Vancouver model but in general and from the vantage point of a lawyer, let me overview how CFL works - collaborative family law lawyers provide an initial assessment to discuss three process options: mediation, collaborative law and the court connected law model. The client engages in a process suitable to his or her situation after obtaining appropriate recommendations and cost benefit analysis. Once again, Vancouver will speak to the integration of divorce coaches, financial or child specialist. Not all cases are appropriate to the CFL model. If there is informed consent to CFL, we have protocols to advance this option to the other spouse. Our new solicitor-client contract is known as a participation agreement brackets Professor Landes research highlights this instrument bracket. This contract explicitly provides that

are Professional Services are limited to settlement not contested litigation. If we don't settle, the CFL lawyers are off the case. It's a total settlement process, full honesty and closure and if a material breach of the CFL principles or protocol were to occur, the file will be terminated and lawyers excluded from further involvement. That's the deterrent - defaulting back to the adversarial court connected La model with its Associated emotional and financial cause - so here is the opportunity for spouses to work together and ineffective and hands-on structure reorganizing their families transition in a comprehensive and balanced system. Balance not only in the sense of privity of contract and power differential but in terms of professional intervention for people in situational crisis and systemic recovery.

In my humble view, this is not a revolution as much as an evolution. And we will continue to evolve, continue to improve, to train, to advocate reason and responsibility to our family law clients. We will continue to grow. The collaborative law networks are inclusive. Here in Ottawa and across the province with the Ontario Collaborative Law Federation, we have hundreds of nascent CFL lawyers who are pathfinders in ADR's classic tradition of transforming conflict in society. You know the case of Medicine Hat, Alberta, which boasts 90% of the Family Law Bar as practicing CFL lawyers. That's healthy as a community when legal resources respond to the public in the service delivery of a process which is predicated on the notion that "people can work it out" as opposed to the adjudicatory model's assumption that "people cannot work it out". That simple differentiating truth will integrate collaborative law as a mainstream practice option for every family law practitioner in Canada. It is as inevitable as the entrenchment of court-connected mediation in civil litigation. Interest-based negotiation works, particularly when practiced by specially trained professionals resourced by the strategic therapeutic support of divorce coaches and child specialist. Some will inevitably criticize this tide of change while collaborative practitioners surf on a greater momentum of knowledge, skills and dedication to the values and principles of consensus, self-determination and justice. Collaborative law will constitute the dominant process practice option in mainstream family law on an "as and when" not "if and when" basis. It is ADR's manifest destiny.

Nigel Macleod

B. Soc. Sc., LL.B.

Acc.F.M.(OAFM), Adv. Pract. (ACR)

Roster Collaborative Family Lawyer

Roster OMMP Mediator