

Précis Paper

Benefits of using Interdisciplinary Collaborative Practice (ICP)

A discussion of Interdisciplinary Collaborative Practice (ICP) as an alternative method to dealing with relationship breakdowns in Family Law matters.

Discussion Includes

- What is ICP?
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- Tips for dealing with the breakdown of a relationship

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Benefits of using Interdisciplinary Collaborative Practice (ICP)

In this edition of BenchTV, Susan Warda (Partner – Mills Oakley, Sydney) and Bernie Bolger (FDRP – Bernie Bolger, Sydney) discuss the processes involved in using Interdisciplinary Collaborative Practice (ICP) as an alternative dispute resolution method in dealing with relationship breakdowns in Family Law matters, and the benefits of doing so.

What is ICP?

1. One in three marriages breaks down in Australia. About 30,000 of these matters each year involve children.
2. Interdisciplinary Collaborative Practice (ICP) is a form of alternative dispute resolution that is growing in popularity to deal with relationship breakdowns as an alternative to Court processes. One of the benefits of ICP is that you are able to give a voice to all affected parties. The Law Society of NSW defines collaborative practice to be mediation with advice, or law without litigation.
3. To embark on ICP, the parties who have separated engage lawyers who are specially trained in collaborative law, who will then engage a collaborative coach. The five parties, i.e. each person involved in the breakdown of the relationship, their respective lawyers and the collaborative coach, will then sign a participation agreement to commit to the collaborative practice.
4. This participation agreement essentially says that those lawyers/any other professional engaged in the process are unable to work with the parties if they decide to litigate. This feature is very different and unlike any of the other alternative dispute options currently available.
5. In collaborative practice you do not actually have a mediator as a separate person who is sitting there trying to facilitate discussions. The parties, with the help of their lawyers and the coach, are all facilitating discussion.
6. From an emotional and humanistic point of view, the CP process is very different in the screening that occurs to ensure that parties and practitioners are suitable for the process. For example, where there is evidence of family violence, the CP process may not be suitable, this is something that will be determined in the screening process.

Collaborative Coach

7. A collaborative coach has the chance to meet with both parties before any kind of agreement is actually signed. Coaches will attempt to build rapport and trust with both parties before the process begins.
8. The coach will guide the parties in making the best decisions for the family, and aims to help the parties maintain respectful relationships post-separation/divorce. The coach can bring issues to the table that they may have noticed that clients may feel embarrassed to divulge to the wider group.
9. The collaborative process may involve having social scientists, psychologists, lawyers and financial advisors if necessary to ensure that the client has access to relevant professionals working on their matter.
10. The number of family law matters that are ultimately litigated to conclusion and decided by a judge is a very small percentage (less than 10%). Settlement rates are high, and family lawyers contribute to this.
11. Collaboration gives family lawyers an opportunity to work with their clients, with the assistance of the coach, to try and get them to a point where they can consider different solutions about moving forward.
12. Working with the coach allows lawyers to focus on reaching an agreement, and ensuring that the agreement is legally binding. Even in a matter where there are not children involved or parenting issues, the coach is an essential part of that process.
13. The coach manages both parties emotions, while the family lawyers are able to talk about numbers, the division of assets, why it might be in everyone's interests to sell or retain an asset, and so on. The whole team works together to deliver two different skills sets to the same family in the one process.

Financial Neutral

14. Financially, no one is better off after separation so it is important to be able to work with clients to help them see that there is a way forward. Bringing in a financial neutral can be extremely helpful, particularly when one person has not been as aware of the finances as the other party. For all parties, particularly women, it is a confronting time to think that they may have to rehouse themselves and what this will entail financially.
15. Through the separation the parties may end up with money or assets that they have never had to deal with before. Therefore one of the crucial parts of ICP is to include a financial

neutral, i.e. someone who has financial planning skills. They are not always an accountant, but they will be someone that will join the team and assist in financial matters. They will work out whether budgets are necessary, whether there are any tax consequences if they were to, for example, attempt to keep a holiday home, whether it is timely to sell particular assets at that time, and so on.

16. The financial neutral will assess all of the various financial factors that lawyers are not qualified to provide specialist advice in. The financial neutral works with both parties to provide them with all of the relevant financial information that they may need in order to make informed decisions about their future.
17. The collaborative process enables people to have a vision for the future. Working through the process of financials all together is reassuring for the clients as everything is out in the open.

Advising in front of other lawyers

18. Advice being given by each lawyer in front of the other lawyer and client is a liberating process for everyone involved. It knocks down the closed doors that exist in the traditional way of giving advice.
19. When giving advice in this way, you need to be very confident in what you say, and you need to take into account that your client's spouse and their lawyer are sitting hearing the advice that you are giving.
20. As a lawyer you are able to give the best advice you possibly can at that time, because you have all of the background information that has come from both parties. The lawyers can qualify their differences in advice, if there is any, and explain this to the parties and the uncertainty if they were to litigate.
21. In discussion about the range of potential outcomes, the parties are able to realise the level of control that ICP is able to give them. If a client does not like the advice the other lawyer is giving, the coach is present to be able to explain to the client what their spouses lawyer may have relied on to reach that particular conclusion, and so on.
22. Parties often need additional information in order to make informed decisions about settlement. For example, if there is a family business, the collaborative process allows parties, with their lawyers, to agree upon an accountant to value the business. The obligations in relation to providing all of the financial information, for example, is the same as if you were litigating or negotiating in a traditional way.

23. You still have the Family Court as a backdrop if there is a dishonest or non-disclosure, non-transparency, etc. Clients and lawyers sign the participation agreement, agreeing to act in good faith and to certain conditions of collaboration, such as to act with transparency.
24. When you are using a coach who is an accredited family dispute resolution practitioner (FDRP) you can conduct a mediation under the auspices of collaborative practice. If the process does not work out, the FDRP can issue a certificate under section 60I of the *Family Law Act 1975* (Cth) so that they do not have to repeat the mediation process, as is mandatory before a matter can come before the Court. This means that the collaborative process is never a waste of time, you are always further along than when you started.
25. Most collaborative family lawyers will tell you that it is very unlikely for a collaborative law matter in the current environment to fail. In the Sydney registry of the Family Court there are delays of some 3 years from the date of filing an application until you are allocated a trial date. When parties are faced with the lengthy delays of Court, plus the costs of litigation, collaborative practice is an attractive option.

Giving children a voice

26. The collaborative process does allow for the children's voices to be heard. The collaborative coach can sometimes take the parents aside in some three way meetings, and work through creating a parenting agreement.
27. This has a financial benefit to the clients because their lawyers do not always have to be involved in every meeting. If the case is that they are running into problems understanding what the needs of the child are, or there are differences in what is considered to be in the best interests of the children, a child inclusive practitioner (CIP) can be involved.
28. A CIP is a professional, usually with a psychology background, who has special skills in dealing with children as they go through divorce. They will talk with each of the children independently, and will also talk with both parents independently.
29. The CIP will speak first to all of the parents, and screen them to make sure they are suitable for collaborative practice, then the coach will speak with the children individually. The coach is able to speak with any children from around age 5 through to 15.
30. The discussions are always about the emotions the children are experiencing and whether there is any conflict, what is working for them and what is not working for them. It may be part of the feedback from the CIP that the children need to see an ongoing counsellor but that again is a separate process.

31. Research says that children who have been involved in the process will actually feel greater ownership of the agreements, and those agreements will actually stick for longer,
32. The collaborative process allows parties to move on to the next chapter of their lives, feeling more positive about the experience than if they had sat across from each other in a Courtroom. Even for lawyers, the collaborative process is easier in that it is less taxing and far more rewarding.
33. In considering the cost of engaging in the collaborative process, you should not chose collaborative family law because it is the cheap option, particularly because in some matters it can become expensive with the more professionals you involve and the amount of meetings necessary before an agreement is reached.
34. However, it is important to keep in mind that it is more cost effective than the litigation process, having regard to what the Family Court requires. Having multiple issues dealt with in the one sphere, i.e. the separation, property, child matters, and so on is more cost effective. Also, the damage that can be avoided by dealing with the matter collaboratively is priceless.

What does ICP involve?

35. Unlike traditional negotiations, other types of ADR processes or going to Court, ICP does not commence with a letter being written in a lawyers language for a spouse to read, who then engages their lawyer to write back, and so on.
36. The first step is to coordinate a meeting - when and where that meeting occurs depends upon the wishes of the parties. Once you have decided when your meeting will occur, everybody will attend at that meeting – the parties, the lawyers and the collaborative coach.
37. Usually the coach has met with each party prior to that first five-way meeting. If the coach has done so, the coach will often have a telephone conference with the lawyers telling them what the most pressing issues are for the parties.
38. Generally the meetings are alternated at each of the lawyer's offices, and whoever hosts the meeting will circulate an agenda of what is to be discussed that day. The agenda may change for the next meeting if urgent issues arise that must be dealt with.
39. The meetings are documented by way of minutes. Very few letters are written between the lawyers. Items to action before the next meeting such as obtaining a specific valuation, etc., are included in the minutes of that meeting. The number of meetings will depend upon the complexity of the case. On average it is probably about 4 meetings from the time you talk

about participation agreements and you develop a balance sheet, discuss interests, needs, concerns, and so on.

40. At the end of these meetings when a settlement has been reached, these documents for settlement are drafted as if you have been to Court and you will still lodge with the Court your application for consent orders and the relevant suite of documents will be drafted for signature.
41. What makes the process move forward more quickly is that each client is humanized in front of their ex partner's lawyer. Having all participants in the process hear each client's wants, hopes and dreams helps to formulate options.
42. Sometimes when a client hears about the collaborative process they may become overwhelmed and say that it seems like a lot of meetings, voice concerns about how long the process will take, and so on. However, this process has the potential to work very quickly if this is what both parties want and are willing to participate.
43. By the time you have reached settlement, the drafting of the documents for the lawyers takes place relatively quickly, then there is a final meeting where the documents are signed, then the documents are lodged to formalize the process.
44. ICP is a really a tailor made process for each case to suit each family and what their needs are at that point in time. The process allows both parties to have some input in ensuring that the other party is living with decency and dignity in the next chapter of their lives.
45. Feedback suggests that the parties feel like they have control of the process, and they are able to work with people that they select. The process gives parties control, privacy and contains costs.

Tips to help with the breakdown of relationships

46. First and foremost, when dealing with the breakdown of a relationship you should make sure that the relationship is over. This is important because no one comes out of a breakdown of a relationship without being scarred emotionally and financially.
47. The next important thing is to choose a good lawyer. Bernie recommends engaging a collaborative professional. If you are not sure where to find a collaborative lawyer, you can go to the NSW Collaborative Practice website which holds a list of CP practitioners from a range of fields: lawyers, financial advisors, accountants, coaches, etc.

48. For example, engaging someone like a financial advisor can be extremely beneficial to all parties because if you can take the fear of financial insecurity away then you will be in a better space to negotiate.
49. You should also not be afraid to seek emotional help during the process. Being involved in a separation or divorce could mean that you will go through various stages of grief, which is quite normal. Speaking with a professional may sometimes be a better option than speaking with friends or family because they will often have their own agendas and experience. In an attempt to protect you when you are at a vulnerable stage in your life, they may not always be doing the right thing.
50. Lastly, if you have children you should make every decision with regard to the best interests of the children. You should not be tempted to use the children as a pawn in a game between yourself and your ex-partner. The collaborative process can help guide you through this.

BIOGRAPHY

Susan Warda

Partner – Mills Oakley, Sydney

Susan Warda is team leader and partner in the Sydney family law practice at Mills Oakley. She is an accredited specialist in family law, and was named 2013 Woman Lawyer of the Year in Private Practice by the Women Lawyers Association of NSW. She is an experienced mediator and trained collaborative law practitioner. Susan also undertakes Hague Convention Applications, the separate representation of children and matters concerning parenting arrangements, child support matters and de facto relationship cases. She is a founding member of the Western Sydney Collaborative Family Lawyers network, a member of the Australian Institute of Company Directors (AICD) and a Director on the Board of the Variety Asia Pacific Regional Council. Susan has been appointed as the Vice-President to the Board of the NSW Collaborative Professional Inc. in 2017. Susan has been endorsed as a Leading High-Value & Complex Property Matters Lawyer in NSW in 2018, a Recommended Sydney Family & Divorce Lawyer in *Doyle's Guide* 2016, 2017 and 2018, and a Leading Australian Family & Divorce Lawyer in *Doyle's Guide* 2015.

Bernie Bolger

FDRP – Bernie Bolger, Sydney

Bernie Bolger began her career as a pharmacist. Bernie's passion has been focused on helping women and families attain emotional and financial wellbeing. Bernie has achieved as an honours degree in Pharmacy, a Diploma in Financial Planning, a Masters in Counselling and Applied Psychotherapy and a Graduate Diploma in Family Dispute Resolution (FDRP), accredited by the Attorney General's Office.

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