

COLLABORATIVE FAMILY LAW



A new approach to reaching an amicable solution when you break up

Breaking up is never easy to do, whether you're married, living together or just dating but when there's children involved it can be even harder. A lot of the time couples find themselves in court arguing over who should get custody of their child(ren) and it can make the separation process even harder for you both and especially for the wee ones caught up in the situation.

So when we heard about a relatively new initiative called Collaborative Law that's currently being used throughout Ireland between married couples who are separating, we thought it was a great idea and wanted to fill our readers in on what it's about.

Collaborative Law is a new way of dealing with family law cases and in essence it's a way for solicitors to work together instead of against each other when it comes to child custody. The solicitors and the couples basically co-operate together for the sake and wellbeing of the child and put family to the fore.

We chatted to solicitor Gearóidín Charlton of Charlton Solicitors to find out more about Collaborative Law and what it can do for families in the process of getting a legal separation or divorce.

“ Many lawyers struggle with the tools available to families in courts

What does Collaborative Family Law entail?

Collaborative practice is a relatively new way for separating couples to resolve their disputes in a respectful way and it is a way of making key decisions about their future and the future of their family without the necessity of going to court.

It is a client-centred process which

is helped by the fact that there are trained lawyers present at all times to help the couple move from fighting to talking and eventually leads to an agreed solution that benefits all sides.

Traditionally when couples go to court over custody rights, the system treats both sides as the opposition and this is never an appealing situation. It has the potential to destroy any future relationships within the family and is devastating for children. It is a commonly held view amongst practitioners who have tried alternative models of dispute resolution that the current system itself will make things worse not better. A lot of lawyers struggle with the tools currently available to families in the Irish courts as they are not conducive to the sensitive and personal assistance that families need in a time of extreme turmoil.

How does Collaborative Family Law work?

Following an initial consultation with the individual's own solicitor, negotiations take place in four-way

meetings which include:

- A face-to-face with the couple and each of their lawyers and, where necessary, a family consultant (who assists with the emotional fallout), a child specialist (to advise in relation to the children) and a financial specialist (to assist with all financial matters where necessary).
- The lawyers provide legal advice in the meetings and guidance throughout the process but all the decisions are made by the couple.
- Therefore everybody works in a non-confrontational way to reach a solution that benefits everyone involved.

Collaborative practice is distinguished from the traditional court process by the following elements:

- A commitment to the withdrawal of all the professionals if either client goes to court
- A commitment to engage in open communication information sharing which involves parties in an honest, voluntary and good faith exchange of all relevant



Collaborative practice is a constructive alternative to going to court

information

- A commitment to negotiate and reach an acceptable settlement by creating shared solutions that take into account the highest priorities of both parents and the interests of all the family members

Both the couple and their solicitors have to sign a Participation Agreement committing them to the above elements. It means that collaborative practice negotiation is client centred rather than lawyer centred. The aim is to reach a higher, deeper resolution and not just a settlement where the parties are worn out and the next step is for both sides to battle it out in court.

What is the normal procedure for Collaborative Family Law?

The process is based on a series of meetings with the team members, ie, the couple, their lawyers and whatever experts they need to bring into the process. Unlike the process of going to court, there will be one financial expert, one child expert and so on as the case requires it.

When battling it out in court, each side appoints their own expert and so there is a duplication of cost.

However, the collaborative approach means that meetings will be joint ventures where you'll be working together with an agreed agenda that sets out certain matters which will be discussed at the meeting. Each person has an opportunity to prepare for the meeting with his/her lawyer and discuss any issues which cause concern. The lawyers will also meet before the meeting to discuss any

issues that might arise. During the meeting anybody can take an opportunity to take a break and talk to their lawyer.

Have solicitors ever worked this way before?

Solicitors in Ireland have been working this way since 2005. Collaborative practice was originally started by Stu Webb in 1990 in the US and there are now over 3,000 members of the International Academy of Collaborative professionals in North America.

Is it being enforced in Ireland?

Once an agreement is reached it's translated into a legal Separation Agreement which is enforceable in Ireland.

Alternatively, it can also be translated into a Consent Order which is ruled before the court and is enforceable in Ireland. Collaborative practice is on the increase in Ireland.

What kind of success stories have there been in the last few years?

There have been a lot of success stories using collaborative law eg When one couple used collaborative practice to end a 16-year marriage their team included lawyers, a child psychologist and a financial specialist. Their team guided them to a fair financial arrangement for the children by helping them to keep everyone's needs in perspective.

Years after their divorce, the couple still call each other every week to update one and other on the children's past week.

Does collaborative practice ever take away from the parents rights?

Collaborative practice doesn't take away rights from the parents in any way. The end of a marriage can be tragic for everyone involved so collaborative practice is a constructive alternative to going to court where mutual respect is hugely important. The couple may cease being spouses but they don't cease being worthy human beings.

When respect is given and received discussions are likely to be more productive and an agreement reached more easily.

Does every solicitor's firm in Ireland offer this service?

Not every solicitor's firm in Ireland offers this service. Only firms practising family law and even then not all family lawyers are collaborative family practitioners solicitors who practice collaborative family law are usually part of a practice group eg South Dublin Collaborative Lawyers are a group of 12 practitioners based in South Dublin (pictured right).

These are individual solicitors from non-aligned practices who have come together to promote collaborative family law as an alternative to litigation.

Many areas in the country have a practice group and information about qualified collaborative lawyers can be found on the individual practice group websites.

Alternatively you can log onto the website of the umbrella organisation the Association for Collaborative Practitioners, www.acp.ie.

The benefits of COLLABORATIVE FAMILY LAW

- It allows the couple to make key decisions about their future and the future of their family without having to go to court
- It encourages mutual respect
- It promotes the best interests of the children as the process is child centred. The less acrimony there is between couples separating the easier separation is for the children
- It is a creative process that explores as many options for settlement as possible
- Negotiations take place in a principal, dignified and respectful manner
- The couple are in control of their own destiny. They get to control the substance of the process and create their own outcomes
- It has the potential to substantially reduce the emotional cost incurred in litigation
- It has the potential to be more cost effective than litigation

South Dublin Collaborative Law Group

Back from L-R Sharon McElligott, Michael Sheil, Raphael Gilmore, Jason McGoe, Gearóidín Charlton, Kathy Irwin, Brendan Dillon
Front: Mary O'Neill, Joan O'Mahony, Yvonne McEvoy & Shauna O'Gorman.

