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Kinder, gentler divorce alternative sweeping Canada

Lawyers praise system: 'Collaborative' split easy on emotions, wallet and it's faster

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OTTAWA - Divorce courts in one Canadian city have already gone out of business as lawyers and their clients flock to the hottest trend in family law -- "collaborative" divorce.

It is easier on the kids, your wallet and your relationship with your ex, proponents say, and governments like it, too.

"Virtually no family law is done in the courts in Medicine Hat any more because clients typically choose the collaborative family law process," said Janis Pritchard, a senior lawyer in the southeastern Alberta city of 52,000.

Eighteen months ago, 20 of 21 divorce lawyers in Medicine Hat joined the vanguard of the "kinder, gentler" divorce movement sweeping Canada from west to east.

Collaborative family law practices have popped up all over Canada, including the four western provinces, Ontario, Nova Scotia and the Northwest Territories.

On the weekend in Saskatoon, Ms. Pritchard trained another 26 lawyers in mediation, negotiation and cutting-edge settlement skills designed to transform them from marital gladiators into peacemakers.

By next June, one out of every 10 lawyers in Saskatchewan will probably have completed collaborative law training, she said. "It's growing by leaps and bounds. It will completely transform the way people will divorce in the future," she predicted, adding that the Alberta government is "thrilled" by the growth of collaborative law in Medicine Hat since court administration costs are "way down."

Unlike the traditional adversarial, court-connected approach to divorce, collaborative divorce eliminates litigation as an option. The goal is for the separated spouses to settle their differences in a way that works best for them, not necessarily according to their strict legal "rights," although each spouse has a lawyer to advise them of their entitlements.

The spouses sign a binding contract that they and their respective lawyers will participate in four-way negotiations in good faith; fully disclose to each other their financial and other key information; and renounce their right to threaten, or engage, in litigation. Should either spouse later decide to go to court, the lawyers must quit and cannot represent either side. Collaborative family law differs from mediation, another settlement mechanism, because the spouses are assisted by their lawyers to devise their own deal, without the help of a neutral arbiter.

Invented in 1990 by American lawyer Stu Webb, the fledgling collaborative law movement has so far attracted several hundred "born again" Canadian lawyers tired of the combativeness of traditional family law practice, and of seeing families scarred by the scorched-earth, take-no-prisoners tactics of many divorce wars.

"Any judge, any experienced family law lawyer will tell you that the collateral damage to families in the traditional positional bargaining and in the court system is huge, and none of us likes that," said Ms. Pritchard. "It exhausts families psychologically, emotionally and financially."

Ms. Pritchard cited the recent example of a couple with two young children who lived in separate cities one hour apart. In five years, they spent tens of thousands of dollars on a bitter custody dispute that was ultimately settled on the courthouse steps, under pressure from the presiding judge and their own lawyers. Six months later the unhappy father was in Ms. Pritchard's office, prepared to spend \$100,000 to relitigate custody. On Ms. Pritchard's advice, the pair tried collaborative family law. After five months of four-way talks with their collaborative lawyers, the couple decided to move the children back and forth between the two homes -- with one of the parents schooling the children at home part-time.

It was an innovative solution that would never have been devised in a courtroom, said Ms. Pritchard. "Before, the children were going downhill ... in serious psychological difficulty, with the parents fighting on a regular basis about, and in front of, their children. These parents are now co-operating and the war has ended and the children are happy, normal, thriving children."

Toronto lawyer Judith Huddart, an executive member of the Canadian Bar Association's national family law section, said while collaborative law has won many lawyer converts in the past two years, a publicity blitz is needed to raise the public's awareness. "It's not good enough for us to say we want to practise this way, we have to get clients to buy in," she said.

In the collaborative divorce process, lawyers coach their clients in four-way meetings, but the spouses are firmly in the driver's seat. Lawyers advise their clients openly, in front of the other spouse. Information is not to be used as a strategic weapon.

Effective communication is promoted not just to produce a settlement the ex-spouses can live with and respect, but to avoid the polarization associated with adversarial bargaining, and to enable the ex-spouses to co-operate after a deal is signed.

Collaborative lawyers say the process tends to be quicker, cheaper and more effective than the traditional method.