

## Feature

# Mutual respect the goal



Robyn Ross, seen here with her daughter Siena and a friend visiting a film set, says collaborative divorce gave her peace of mind. PHOTO COURTESY ROBYN ROSS

*Alternative approach to litigated breakups quietly growing in B.C.*

**Tom Sandborn**  
tos65@telus.net

"One of the things I learned going through my divorce that way was that I needed to love my child more than I hated my husband," said Robyn Ross with a wry laugh. The Vancouver movie industry worker went through her divorce a decade ago, but she was among the first in the province to try an exciting new approach, dubbed collaborative divorce, that avoids litigation, resolves conflicts and enhances mutual respect and regard between the divorcing spouses.

Like a small but growing number of B.C. couples, Ross and her ex-husband turned to this new cooperative approach as an alternative to the emotional and financial damage often involved in courtroom litigated battles.

Ross credits the collaborative process with allowing her and her ex-husband to get past bitter feelings to become real friends as they

cooperate in raising their daughter.

"Our daughter is doing amazingly well," Ross said. "And at the end of the day, my ex and I both felt the process was fair."

Despite what started as a deeply unhappy separation, Ross told the *Courier*, she and her ex-husband are now good friends, and when he remarried a few years later, she was comfortable attending the wedding and has developed a friendship with his new partner.

"In collaborative divorce," Ross said, "everyone is held accountable for the best interests of the child. I wouldn't want anyone to think it was easy. It wasn't. But collaborative divorce gives you the tools you need. I couldn't have had all this joy and family without the collaborative process."

## Lawyer sought better way

With 70,000 divorces occurring in Canada each year and a divorce every 13 seconds in the U.S., there is a lot of divorce-related

miseria in North America. The received wisdom claim that half the marriages contracted here will end in divorce, while memorable and widely believed, is less than entirely accurate. For starters, the 50 per cent failure rate is an American figure and it is even higher in some European countries. For Canada, the most recently reported (2008) chances of a marriage ending in divorce are closer to 40 per cent. And in both countries, the aggregate numbers for divorce include not only first marriages, which end in divorce less often than the average, but also second and third marriages, which tend to break down much more frequently and drive up the average.

But even if you scale down the statistics for accuracy, the number of people who suffer through harrowing marriage breakdowns is huge. Litigated, antagonistic courtroom divorce can increase the pain for all concerned.

A quarter century ago, a

family law practitioner in the American Midwest, Stu Webb, decided there had to be a better way to help his clients navigate divorce. He created a new approach called "collaborative practice," designed to keep families out of the adversarial atmosphere of courtroom litigation and into a focus on cooperating for the sake of their children's future. A soft-spoken student of Tibetan Buddhism who had been practicing law since 1964, Webb said he became "burnt out" under the stress of adversarial litigation and invented this alternative approach to divorce in 1990. Since then, the number of practitioners around the world has burgeoned and there are now an estimated 40,000 lawyers trained in and employing the methodology, Webb told the *Courier* by phone recently from his retirement home in Minneapolis.

Webb calls the prior commitment made by clients and lawyers who enter into a collaborative divorce process not to take the divorce

into courtroom litigation "Rule One." He describes his first realization in the 1990s that such a contract would be fundamental to success in non-adversarial divorce his "breakthrough, aha moment."

## Designed for families

Readers curious about the contracts that formalize these commitments can find the documents that the divorcing couple and all the professionals on their collaborative team sign described on the website of Collaborative Divorce Vancouver at [collaborative-divorcebc.com](http://collaborative-divorcebc.com).

According to the website, when you sign a Participation Agreement, you are committing to:

- Stay out of court
- Communicate openly and with respect
- Disclose all relevant information promptly
- Keep negotiations confidential
- Hire new lawyers and start over if you do decide to go to court

# of collaborative divorce

• Not use any disclosed information against each other if you go to court.

Although most contested B.C. divorces are still done in the classic, bruising courtroom litigation style, a small but growing group of local practitioners have been building up a collaborative practice community in the province since Webb and two other pioneers in the approach, Peggy Thompson and Pauline Tessler, conducted a training session here in 1999.

Nancy Cameron, the Vancouver lawyer who invited the trainers to Canada, said nearly 500 B.C. lawyers are trained in the approach.

CBC TV's *Doc Zone* aired a powerful film called *How to Divorce and Not Wreck the Kids* in 2009, including a portrait of Sally and Lionel, a B.C. couple using the collaborative approach, but the option remains relatively little-known here.

Phyllis Tessler, the California lawyer who helped lead the first B.C. training sessions in collaborative practice, was scathing in her assessment of the litigation approach to divorce in an email exchange with the *Courier*.

"In family matters," Tessler wrote, "which are inherently complex and deal with a rupture in the most essential human relationships, litigation — which builds in adversarial aggression, oversimplification, and polarization, as well as a focus on blame, is the wrong model. Nobody designing a system for resolving divorce related legal issues arising during normal family restructuring would design the one we've got."

Litigation, Tessler wrote, is a zero sum process that is more costly than divorcing families can afford financially and emotionally.

"It damages those who participate in it by causing both lawyers and clients to act from the most primitive reptilian parts of their brains, remaining in high levels of biological stress that are inconsistent with creative problem solving," she said.

She added that the process itself damages clients, depressing immune functioning and cognitive processing capacities and damping energy available for work, volunteering in the community, and parenting children.

"One eminent California family law judge has said family court is where they shoot the survivors," she added.

"Collaborative divorce builds in value-added interdisciplinary services that meet the full spectrum of needs that every family has in divorce: emotional, legal, financial — with a constructive, respectful, creative and private focus on shared values and the best outcomes for every member of the family system," she concluded.

## Teams support spouses

Typically, a collaborative divorce involves the spouses, a trained collaborative lawyer for each and two mental health professionals who function as a "collaborative divorce coaches," with one for each partner. It can also involve a neutral child specialist and a neutral financial planning specialist to fill out the team working to make the divorce as cooperative and child-friendly as possible.

While the number of professionals involved can entail significant costs for clients, with various B.C. experts quoting typical expenses for a collaborative divorce between \$10,000 and \$25,000, the costs of litigated courtroom divorce can be much higher both in financial and emotional terms.

For example, Sally and Lionel, the couple profiled in the CBC documentary, required only six sessions to come to an agreement that both accepted, even in the face of complicated disagreements over division of property, a situation that could, conceivably, have been much more embittering, expensive and time consuming in adversarial litigation.

"Collaborative divorce was enlightening for me," said Jake Fraser, a Pender Harbour resident who used the process. "It was a reality check. I found out some things about myself that embarrassed me, but things would have been far worse in an adversarial process. I learned a lot about my need to control everything and always be right."

Fraser called lawyer Cameron, who acted for him in the divorce, and the collaborative process itself "sources of good cheer in a

world of pain."

That's the kind of feedback that Danny Zack loves to hear. Zack is a burly, jovial Metro Vancouver lawyer who also practises in Nelson. Zack, like Cameron, has decided to abandon adversarial litigation altogether and handle all his cases without recourse to courtroom battles. (Cameron and Zack are the lawyers shown on screen in the 2009 CBC documentary.)

In a sun-drenched office near Vancouver International Airport, cheerily cluttered with memorabilia from his career in collaborative law and his passionate other life as a highly competitive and successful amateur golfer, Zack said he hasn't been in a courtroom contest in over a decade and he doesn't miss the stress at all.

In fact, he credits his shift to collaborative practice with improving his health and making his life happier.

"In-court competition was tough," Zack said. "Now, I don't have to win anymore. I don't need to go in with a suit of armour. In collaborative meetings I am not outcome-oriented in the same way I was as a litigator. Our goal is to positively

restructure families, not tear them apart."

He never believed children and families should be in court rooms.

"I believed that was destructive," he said. "The litigious approach has all of that negativity of looking backward and alleging bad conduct. Collaborative practice doesn't mean you ignore what has happened, but you don't punish people for it. You try to help them look forward and build a new future that is positive. I quickly decided I wasn't going to keep going into the court system."

Cameron agrees. She said the skills she was developing in courtroom litigation "were not the skills I wanted to embrace in my personal life at all."

She didn't want, she said, to "increase the size of the parts of me that were fostered by the win-lose, blame-and-shame nature of the adversarial court system."

Catherine Brink, a young Vancouver lawyer, went to law school explicitly in order to engage in collaborative practice.

Called to the bar in 2008, she conducts her practice entirely outside of the court-

room doing collaborative divorce, negotiation, mediation, estate planning and pre-nuptial agreements.

"I was seeking a career where I could help people," she said. "The collaborative model is so empowering and respectful. It brings safety into the room for our clients, and the teams are so mutually supportive."

## Empathy for all

The supportive team that Brink mentions often includes collaborative divorce coaches. Two experienced coaches working in B.C. are Deborah Brakeley and John Boland, mental health professionals who frequently work together as part of the team that supports a couple going through the collaborative process.

"While we are in alliance with our own client, we are not aligned against the other spouse," Brakeley said. "We show empathy to both spouses, knowing that divorce means experiencing multiple losses for everyone. We want to address the needs, desires, and views of both parents."

In particular, Boland said coaches focus on parenting plans for the divorcing

couple.

"Our goal is to help them redefine the relationship from a marriage to a co-parenting partnership. We ask our clients what they want their kids to say in 20 years about the separation."

"We want the kids to love both parents," Brakeley added.

"Our goal is to teach compassion and empathy, and we focus on emotional self regulation, practical ways like breathing exercises, yoga and mindfulness to manage the hurt and anger that can go with a divorce."

At the end of the CBC documentary, Sally, a woman the viewer has seen angry and tearful as she engaged in a difficult and sometimes bitter and painful (but in the end, visibly healing) process during her collaborative divorce meetings, sums it up.

"I am proud of Lionel and me. I think we have a great agreement here for our kids. It makes me feel happy for them."

Robyn Ross tells the same story. Her collaborative divorce, she told the *Courier*, left her "at peace."

*Tom Sandborn lives and writes in Vancouver*



Lawyer Danny Zack has abandoned courtroom litigation in favour of the collaborative process: "Our goal is to positively restructure families, not tear them apart." PHOTO DAN TOULGOET