

Collaborative Family Law

An alternative for all family lawyers

Background and development of collaborative practice

The passing of the Family Law Act in 1975 was revolutionary and groundbreaking, doing away with fault-based divorces and introducing a court, which was intended to be less formal and 'user friendly'. It introduced compulsory counselling and conciliation as an intrinsic part of resolving family law disputes. Australia has been and is still seen as being at the forefront of dispute resolution in family law matters.

However, the passing decades have seen a steadily increasing percentage of breakdown in marriage and at the same time more strain on public resources to fund and maintain the traditional court structure. The Court has responded by making more rules for case administration and delays have become lengthier and more uncertain with over-listing being a feature of most court diaries. Lengthier time in the court system of itself increases costs through the likelihood of interim applications and complying with ongoing court management directions.

At the same time as litigation costs and delays increase, the services the court traditionally offered such as voluntary counseling have been stripped from the court, as a philosophy now prevails that the court must concentrate on its core role of hearing disputes.

The Government has been critical of the Family Court and the prevailing Family Law system generally to adequately meet the needs of divorcing couples and its response has been to channel resources to the Federal Magistrates Court in an effort to make access to the court simpler and more cost effective. However, delays in the Federal Magistrates Court can resemble those in the Family Court.

The Government has introduced Family Relationships Centres and resourced the community organisations to take over the voluntary counselling and information role the Family Court counsellors used to play. There is now talk of conciliation conferences in financial matters being undertaken privately rather than being offered as a court service.

It is also probably due to the structural failings in many aspects of the current family law system that some family lawyers have sought another way of resolving disputes, through mediation and arbitration, round table conferences and other alternate dispute resolution processes.

This feeling is not unique to family lawyers in Australia. It is perhaps not surprising that, in that bastion of adversarial litigation, the USA, that family lawyers also sought to come up with another model to resolve family law disputes.

However, unlike most forms of dispute resolution, the collaborative family law model can be traced back to the idea, born of frustration at the limitation of the adversarial system of one individual, Stu Webb from Minneapolis in 1990.

Collaborative family law has spread across the United States and Canada, although it has become embedded in the legal culture of some places more successfully than in others, in particular in Minnesota, California, Ohio, Texas and North Carolina.

By the end of the 1990s collaborative practice took off in a number of jurisdictions as well, including Calgary, Toronto and Vancouver. In 2003, the first training courses were run in England and in 2005 in Ireland and in Australia. There are now well over 550 trained collaborative family lawyers practising in the United Kingdom. Importantly for England and Wales the training and promotion of collaborative law has been taken up by the organisation known as “Resolution”, which was formerly the Solicitors Family Law Association. Through this means the training, advertising and promotion of collaborative law has been consistent and thorough.

Perhaps because the Australian family law landscape has had a relatively conciliation focus to it for many years, collaborative law has only really taken off since 2005, when the first training course was held in Canberra. Since then basic or advanced training courses have also been held in Brisbane, Sydney, Melbourne and Perth. Many places now hold advanced multi-disciplinary training for financial and child welfare professionals.

The Family Law Section of the Law Council of Australia has been involved and has established a national committee under the auspices of the Law Council. The Family Law Council, a statutory authority set up under s 115 of the Family Law Act has prepared a Report to the Federal Attorney General¹ covering the development of collaborative practice and making recommendations for legislative change and practice development.

At an organisational level, the states and the ACT, who have trained family lawyers, have set up organisations to promote collaborative practice in each state. In NSW a non-profit organisation known as Collaborative Professionals (NSW) Inc has been set up as the state peak body to represent collaborative practitioners in NSW. Collaborative Professionals (NSW) now has over 80 members, mostly made up of solicitors but also including financial and family professionals, mediators and community organisations.

Each of the state organisations has set up websites to be able to promote collaborative practice and get information out to potential clients.²

There are also a series of local or regional practice groups who meet to discuss the 'nuts and bolts' of local practice and to drive the development of collaborative practice in their local areas.

Importantly, the Law Societies of most of the States have taken an active interest in the development of collaborative practice. Certainly the Law Society of NSW has been actively supporting the development of Collaborative practice in New South Wales.

What is the Collaborative Practice Model?

In its initial stage, when Stu Webb decided that there had to be an alternative to traditional adversarial process by saying to clients that while he would assist them in resolving their family law matter, if they wished to go to court then he would withdraw from the case.

¹ Collaborative Practice in Family Law: A report to the Attorney general prepared by the Family Law Council, December 2006.

² Collaborative Professionals (NSW) Inc: www.collabprofessionalsnsw.org.au
Collaborative professionals WA: www.collaborativeprofessionalswa.com
Queensland Collaborative Law: www.qldcollablaw.com.au
Collaborative Professionals Victoria: www.liv.asn.au/collaborative-professionals
Collaborative Practice Canberra: www.collaborativepracticecanberra.com.au

Law Counsel of Australia www.collaborativelaw.asn.au

From that fairly simple thought a more considered model of practice has developed. As Pauline Tesler, a leading practitioner and trainer in the field, has stated, however:

“There is really only one irreducible minimum condition for calling what you do “collaborative law”: **you and the counsel for the other party must sign papers disqualifying you from appearing in court on behalf of either of these clients against the other.** Beyond that, all else is artistry, and you are free to accept, reject, and adapt...to your personal style”.³

Despite Pauline Tesler’s call for very flexible practice, the model that is widely used and adopted locally is as follows:

- Both parties and solicitors sign a binding agreement defining the scope and the purpose of the lawyers’ representation: to help the parties engage in creative problem-solving aimed at reaching a negotiated agreement that meets the legitimate needs of both parties.
- The parties agree that no-one will threaten litigation or actually file proceedings to coerce compromises.
- If the collaborative negotiation breaks down then neither solicitor shall continue to represent that party.
- Each party (and each solicitor) share a binding and commitment to keep the process honest, respectful and productive on both sides.

Solicitors maintain their role as advocates for their clients, but wherever possible negotiation is conducted within the framework of joint 4-way meetings with both clients and solicitors present.

In situations of urgency, whether due to a financial or a parenting issue, clients may make an application to the court. Given the nature of the collaborative process it would be unlikely that such a development would be frequently encountered.

Given that collaborative process is designed to reach agreements that, as far as reasonable and possible meet the needs of each of the parties, it is a part of the process that legal advice is given in the joint meetings. This avoids positional bargaining on the basis of a pre-considered legal outcome.

Financial disclosure is central to family law practice and no less so in collaborative practice, although the extent and format of such disclosure may vary from case to case. Issues such as the payment of legal costs are often a matter for negotiation at the first joint meeting. It is an explicit principle of a collaborative negotiation that no advantage will be taken of errors and both clients and solicitors have an obligation to correct errors.

The collaborative agreement that is used by the local Sydney Collaborative Practice Group is attached at Annexure 1.

³ Pauline H. Tesler, Collaborative Law Achieving Effective Resolution in Divorce without Litigation. 2001 American Bar Association p. 6. (The emphasis added is Ms Tesler’s.)

The usual pattern to proceed with a collaborative family law matter is as follows:

- Initial client meeting to discuss options for resolving matter, including options from litigation, solicitor led negotiation, collaboration or mediation. At the initial appointment the solicitor is likely to spend more time listening to the client's account to make an assessment of the issues and suitability for collaboration than giving any advice as to outcome. The first appointment is an opportunity to give information about the process, to discuss the role of experts and to discuss interest-based versus positional negotiating.
- If agreement is reached to adopt the collaborative model then the solicitors would usually have a pre-meeting, to discuss the background and concerns that have come up and are likely to come up during a meeting. An agenda of the items to be discussed at the first 4-way meeting is discussed and agreed.
- There may well be a meeting with your client to prepare the matter for the first 4-way meeting, to discuss how matters will proceed and to assist the client in preparing for that meeting.
- The first 4-way meeting with both solicitors and clients is somewhat procedural. It is usual to formally review and explain the terms of the collaboration agreement, so that all parties are clear as to its terms and as to the process they are entering into. There may be interim or pressing issues that need to be discussed, such as payment of fees, pressing financial or children's arrangements that need resolving on an interim basis. Often preliminary issues such as extent and nature of financial disclosure might be discussed. An agenda is agreed and timing for subsequent meetings.
- At the conclusion of the first and subsequent 4-way meetings one of the solicitors prepares comprehensive minutes of the issues discussed in the meeting as a record together with action points to be undertaken between meetings.
- There would usually be undertaken a debrief as between client and solicitor and between solicitors after the meeting.
- Any matters that come up between meetings should be discussed between solicitors and clients and an extra meeting arranged to discuss any urgent issues.

Why adopt the collaborative model?

For solicitors a family law matter starts at the first meeting, and concludes when the last bill is paid and the file is closed. For clients it is a short time in a domestic relationship that started much earlier and, especially where children are concerned, will continue for a long period after the solicitors have closed their files.

In most traditional family law matters the solicitor can often take the role as "white knight" or holder of knowledge, with the capacity to resolve all issues. Clients are often protected from communicating with one another "for their own good".

Where information is being channeled only between the solicitors the likelihood of a particular version of the truth being spread and the capacity for this to lead to further misunderstanding or escalating a dispute is high.

In the collaborative model, both parties have the benefit of hearing the advice that is given by each solicitor first hand rather than it being interpreted through the other solicitor. Where there are points of difference in the advice there is then the opportunity to deal with such differences between the parties. Often, however, the parties will themselves have the opportunity to assess whether the difference in the advice is sufficient for them to need to obtain further information or whether they can proceed in spite of such different views.

Clients keep control and 'ownership' of their own matter.

Collaborative law depends on a model that encourages solicitors and clients to conduct all negotiations in an open forum, thereby reducing possibility of miscommunication. It explicitly requires good-faith amongst all participants.

It encourages and trains clients to take responsibilities for their own negotiations that can continue after the 'family law matter' has concluded.

Each client, however, has the immediate comfort and support of having the presence of an advocate and 'ally' in the negotiation, which is a big difference over mediation.

Solutions that are reached on the basis of needs-based negotiation are likely to be more tailored to the individual matter and be more durable.

It must be noted with some caution that where solicitors offer collaborative law because it matches that solicitor's personal ideals and values, clients often come to it because they see it is faster and less costly. It should not be seen, however, as a cheap alternative to other methods of dispute resolution.

Because it is relatively hands-on, despite the other value added benefits of a collaborative approach, it may be more expensive in monetary terms than a traditional solicitor-led negotiation.

From the solicitor's perspective, collaborative law has the benefit that there are rarely disputes about solicitor-client costs. The running of a collaborative matter is less paper-driven.

There is a degree of 'collegiality' in dealing with a matter collaboratively, although again care must be taken in ensuring that it is the client's interests that are being served and not the solicitor's in recommending a collaborative model to a client.

Clearly, collaborative law brings many of the hall-marks of a mediation to a traditional round-table meeting. It combines, however, the positive problem solving focus of mediation with the benefit of built-in advocacy and advice functions of having the solicitor present.

As Pauline Tesler states: Two skilled legal advocates can go much further than a neutral mediator in seeing to it that playing field is leveled, at the same time that two skilled legal minds are engaged to help both parties arrive at creative “win-win” solutions wherever possible.”⁴

Interdisciplinary Collaborative practice

One of the great benefits of collaborative practice is the capacity to use professionals of other disciplines to assist in resolving the family law matter.

Some collaborative models include a “team approach” from the outset, so that the client comes in to see both a solicitor and a psychologist/coach to assist them in resolving the dispute.⁵ Clients sometimes start with a psychologist or therapist who refers them to the solicitor.

More often, however, during the solicitors and /or clients may form a view that a collaborative matter needs the assistance of particular input from a professional adviser. Typically such advisers fall into 3 categories:

- An accountant or financial planner to give advice regarding aspects of financial disclosure or future financial effect of orders on a party;
- A psychologist or counsellor or child expert to give advice or feedback in relation to parenting issues;
- A Coach to assist one or both parties in relation to emotional or communication issues arising from the divorce/ separation.

While not essential, it is useful for such other professionals to be collaboratively trained and they may be included as a member of the collaborative team (and therefore be disqualified from acting further outsider the collaborative process or be only consulted to advise on particular issues.

They may participate in the round-table meetings or they prepare a report for the meetings.

When not to collaborate?

One of the skills of a collaborative family lawyer is to assess whether a matter should be handled as a collaborative law matter.

Firstly a collaborative procedure is a voluntary procedure, which will not be right for all clients. Some clients simply do not need any intervention to be able to sort out their matter – it is unlikely that you see them other than to perhaps draft consent orders.

At the other end of the scale there are those low functioning, high conflict clients who are incapable of reaching or holding agreements without a third party making a decision for them.

⁴ Tesler, *ibid.* p9.

⁵ For an interesting “team approach” offered in Melbourne, take note of the Melbourne Collaborative Alliance, see: melca.com.au

In between there is a whole range of clients who can benefit from the collaborative law process. Even those clients who seem to be very entrenched on a dispute may well be able to use the collaborative model if there is a willingness to sit and hear what the other person has to say.

Particular areas where it may be inadvisable to use a collaborative model may be where clients are seeking to use the process to delay to coming to an agreement; where they perceive that it will be easier to avoid full financial disclosure through the collaborative process; or where there is a history of domestic violence, where there will be no level playing-field for a face to face negotiation. Another factor that may or not influence whether it is appropriate to begin on a collaborative matter (or any other sort of negotiation for that matter) is at what stage the client is to be able to negotiate.

Assessment of suitability for collaboration is therefore one of the things that you will be looking for in a first meeting with a client. This may involve as part of the discussion, questions such as:

- Whose idea was it to separate?
- How did you feel about it at the time? How do you feel about it now?
- Are you in a new relationship?
- How would you describe the communication with your partner before separation? Now?
- In your relationship did you have an equal say about financial matters/ parenting decisions?
- How often did you and your partner argue? What about?
- Have you ever been frightened of your partner? Has your partner ever hit you? Are you still frightened?
- Will you be able to speak freely in front of your partner?
- Does your partner use the children to get what he/she wants?
- Are there any drug/alcohol/medical/psychiatric issues for either of you or the children?
- Have you had/Are you having counselling? How helpful was it?
- What will you do if you do not reach agreement?
- How flexible are you willing to be?

Becoming a collaborative lawyer?

Pauline Tesler suggests that it is easy to decide to become a collaborative lawyer. Doing it well is not.⁶ It requires a change in thinking as well as learning a process – unlearning being adversarial – and being the repository of all knowledge and solutions for our clients. She suggests that there are several key questions that need to be asked and considered:

- Who am I?
- Who is the client?
- What is the task?
- How do I do this task?

⁶ Tesler, *ibid.* p 23

Each of these questions requires self-analysis and challenging accepted ways of practice and habits. Not all solicitors have those skills. Not all solicitors want to learn them.

The first practical step in becoming a collaborative lawyer is undertaking one of the training courses that are being offered. The usual training course is a practical two-day training, which covers the procedural aspects of collaborative practice. This is followed by a three day advanced course, which deals with more in-depth 'mediation' techniques, issues such as getting away from positions and establishing interests and interest based negotiating.

Membership of Collaborative Professionals (NSW) Inc and a local practice group is recommended. For information, you could search the IACP at: collaborativepractice.com

Conclusion

There is now a core of family lawyers in NSW who are trained and enthusiastic about collaborative law as a future way of practice. It is unlikely that it will now wither on the vine.

It will take further work. Even in USA, where eight to ten thousand practitioners have been trained as well as thousands more family and financial consultants, many divorcing couples remain unaware of this option as a dignified, constructive and child-protective family law option available to them.

Annexure A

COLLABORATIVE LAW PARTICIPATION AGREEMENT

1. Parties

- 1.1. **WIFE** of [ADDRESS] (“Wife”);
- 1.2. **HUSBAND** of [ADDRESS] (“Husband”);
- 1.3. **Lawyer** of [Law Firm] [Address (“Wife’s Lawyer”); and
- 1.4. **Lawyer** of [LAW FIRM] [ADDRESS] (“Husband’s lawyer”).

2. Goals

- 2.1. Wife and Husband wish to solve their problems through meaningful discussion and negotiation instead of going to Court.
- 2.2. Wife and Husband and each of their lawyers agree to:
 - Work to reach agreement on all important issues between Wife and Husband arising from their separation.
 - Focus on the future well being of Wife and Husband.
 - Find solutions that are acceptable to Wife and Husband.
 - Work to reduce the negative emotional, social and financial consequences of Wife and Husband’s separation.
 - Focus on the future well being and best interests of their Child.
 - Promote a caring, loving and involved relationship between Child and each parent.
 - Be diligent in their efforts to ensure Child does not become involved in their problems.

- Act quickly to resolve differences between Wife and Husband in relation to Child.
- Openly share information about Child.

3. What we will each do

- 3.1. The lawyers will work together with Wife and Husband in a series of group meetings to help them:
- Discover what is important to each of them;
 - Identify the questions they need to answer;
 - Gather information;
 - Create the maximum number of choices which may help them to meet their goals; and
 - Reach agreement.
- 3.2. Wife and Husband and their lawyers will give complete, honest and open disclosure of all facts and information in a timely manner. We will ask for and provide information in our group meetings.
- 3.3. The lawyers will in joint meetings with the Wife and Husband give each of them legal advice and the Wife and Husband consent to receiving such advice in these circumstances.
- 3.4. Wife and Husband and their lawyers may discuss the likely outcome of going to Court. None of them will use threats of Court as a way to force settlement.
- 3.5. The Lawyers may file consent Court documents reflecting the terms of Wife and Husband's agreements reached in group meetings.

4. Participation with Integrity

4.1. We will all act with good faith:

- Respectfully;
- Honestly;
- Openly;
- Co-operatively; and
- Moderately.

4.2. We will all work to protect the privacy and dignity of all of us.

4.3. We all understand the success of Collaboration depends on all of us working hard together.

4.4. Where what is important to Wife and Husband is different, all of us will use our best efforts to create proposals that are acceptable to Wife and Husband. If necessary, Wife and Husband will compromise to reach an acceptable agreement.

4.5. We will all immediately identify and correct mistakes, errors, wrong assumptions, omissions and miscalculations. We will all not take advantage of any of these matters in Collaboration.

5. Experts

5.1. If Wife and Husband need to retain experts to provide them with advice for them to use in the group meetings, they will engage those experts jointly.

5.2. Once an expert is engaged to provide advice for use in a group meeting the expert will become a party to this Agreement and be bound by it to the extent this agreement is not inconsistent with any professional obligations the expert might have or obligations imposed upon the expert from time to time by law.

6. Staying on the right track

- 6.1. Wife and Husband understand Collaboration is designed to solve only their legal problems arising from their separation. Collaboration is not personal or marriage counselling.
- 6.2. Wife and Husband understand there is no guarantee that they will successfully solve their problems in Collaboration.
- 6.3. Wife and Husband understand and agree that each Lawyer represents only his/her own client in Collaboration, even though we will all work together.
- 6.4. Wife and Husband understand that Collaboration may fail if:
 - The Lawyers do not spend enough time educating Wife and Husband about Collaboration and preparing them for Collaboration;
 - Wife and/or Husband fail to follow temporary agreements they make in Collaboration;
 - Wife and/or Husband fail to do tasks they have agreed to do in Collaboration; or
 - Wife and/or Husband choose to go to Court to resolve issues they do not yet agree about.
- 6.5. We understand that Wife's Lawyer and Husband's Lawyer must withdraw from Collaboration if either learns that Wife and/or Husband has taken unfair advantage of Collaboration. Some examples of this are:
 - Disposing of property without the consent of the other person;
 - Withholding or misrepresenting information;
 - Failing to disclose the existence of the true nature of assets or debts;
 - Failing to follow agreements made in Collaboration; or
 - Failing in any other way to participate in the spirit of Collaboration.

- 6.6. If either of Wife's Lawyer or Husband's Lawyer withdraws from Collaboration, that lawyer will give written notice of the withdrawal to his or her own client and the other Lawyer.

7. Fees and Costs

- 7.1. Each of the Collaborative Lawyers is entitled to be paid for her or his services.
- 7.2. Wife has retained Wife's Lawyer and will pay for his or her legal services. Husband has retained Husband's Lawyer and will pay for his or her legal services. This will continue unless the parties otherwise agree.

8. What happens if Wife or Husband chooses to go to court

- 8.1. Wife and Husband understand that his or her Lawyer's representation is limited to Collaboration. Neither Wife's Lawyer nor Husband's Lawyer can ever represent either client in a contested Court proceeding against the other client.
- 8.2. If Collaboration ends and Wife and Husband go to Court, Wife's Lawyer and Husband's Lawyer will be disqualified as witnesses.
- 8.3. If Collaboration ends and Wife and Husband go to Court subject to their rights of lien and their rights to be paid the client's Lawyers will provide the written material on their files, including opinions or reports, to the respective new litigation lawyers for Wife and Husband.
- 8.4. If either Wife or Husband withdraws from Collaboration or goes to Court, he or she must give the other client and the Collaborative Lawyers written notice of his or her withdrawal from Collaboration.
- 8.5. Wife and Husband must not do anything in the Court system until 30 days after they have delivered this written notice. This means Wife and Husband must not file any Court documents, or bring any Court application, within 30 days of delivering written notice of their withdrawal from Collaboration unless there is an emergency or other exceptional circumstance in relation to Child or an urgent financial issue.

9. Promise to Follow Contract

9.1. Wife, Husband, Wife's Lawyer and Husband's Lawyer pledge to follow and to promote both the spirit and the written word of this Agreement.

DATED:

Wife

Husband

Wife's Lawyer

Husband's Lawyer

Annexure B

Collaborative Family Law

(Firm Name) is pleased to offer collaborative family law as a new and client centred approach to the resolution of family law disputes

What is Collaborative Family Law?

Collaborative family law offers a fresh and dignified approach to resolving the issues that arise out of relationship breakdown. In a collaborative process, the clients and their lawyers agree to work together to find a fair solution to whatever financial or child-related issues need to be addressed without involving the court.

A collaborative approach allows for a greater degree of co-operation between a range of professionals involved in helping families. Clients involved in a collaborative process will have access to the skills of child specialists, counsellors accountants and financial advisers who can bring their expertise to the process when necessary, thereby freeing up the lawyers to concentrate on helping their clients in the negotiations and focusing upon shaping a fair settlement.

Collaborative family law has been practised in the USA and Canada since the early 1990s and more recently in UK, Ireland and Wales. It is now recognised as a successful means of Alternative Dispute Resolution.

What does Collaborative Family Law involve?

- You and your partner will each retain a specialist family lawyer to advise you throughout the process.
- Your lawyer will discuss with you in your introductory meeting or telephone call whether your case is suitable for the collaborative process.
- You, your partner and your lawyers will all sign a Participation Agreement setting out the ground rules for the collaborative process and stipulating that if either client commences court proceedings, both collaborative lawyers will be disqualified from representing either client.
- Underpinning the collaborative process is an understanding that you and your partner, (and your respective lawyers), will act in good faith, be open and honest in your dealings with one another and respect the fact that different views will need to be expressed to achieve a fair settlement.
- The majority of the negotiations will take place at "4 way" face-to-face meetings between you, your partner and the lawyers. Correspondence between lawyers is kept to a minimum. By being present throughout the negotiations, you and your partner retain control, the scope for misunderstandings is reduced and you will be assisted in communicating with each other in a non-confrontational way; this is particularly important if you are parenting children together.

- The meetings are minuted and action points for future meetings agreed. Where appropriate, you will be encouraged to draw on the skills of other specialist advisers, such as accountants to assist with financial disclosure, or child counsellors to discuss an issue which may have arisen in relation to the care of your children.
- Once a settlement is reached, the lawyers will draw up a Settlement Agreement which will usually be submitted to the court for approval and made into a consent order.

2. What about confidentiality?

- All professionals involved in the collaborative process are bound by their own professional conduct rules and have a strict duty of client confidentiality.
- Any discussions or documentation, (with the exception of financial disclosure documentation see below), are legally privileged and conducted on a "without prejudice" basis which means that they cannot be referred to in court.
- This confidentiality will be overridden where any of the professionals involved has a professional obligation to make a report to a relevant authority, for example, if a child is considered to be at risk.
- If the collaborative process fails, you and your partner may not use any of the information or documentation generated outside the collaborative process other than that relating to financial disclosure.

3. What happens if my partner/spouse doesn't give a full and frank financial disclosure?

- This can of course happen as it does sometimes in mediation or in the conventional legal process. Under the terms of the Participation Agreement, the lawyer must withdraw from acting for their client if he/she has withheld or misrepresented information intentionally, or is participating in the process in bad faith. Likewise, it is open to your collaborative family lawyer to advise you to withdraw from the process if they do not consider that your partner, (or indeed their lawyer), is keeping to the terms of the agreement.
- If after a settlement agreement has been reached in collaborative law, you discover that your partner has failed to disclose relevant information, then collaborative family law is no different from any other negotiated settlement. If the outcome of that settlement would have been different had the information been available, it is open to you to seek to overturn the agreement, even after it has been approved by the court.

4. Why can't we go to court if the collaborative process doesn't work?

- The reason that collaborative law has been successful in other jurisdictions is that the lawyers are disqualified from acting for the client should collaboration fail. A disqualification agreement underlines the fact that all the parties are attempting to achieve settlement without threatening or being subject to the threat of court proceedings when things become difficult.

- By agreeing at the outset not to go to court, you, your partner and the lawyers can be encouraged to reach creative settlements, (of course having regard to the legal position), but having you and your family's particular interests at the forefront of any settlement proposals.

5. Is my case suitable for the collaborative process?

Collaborative family law is not for everyone.

It will be of interest if the following are important to you:

- you want a dignified, non-aggressive resolution of the issues;
- you and your partner have children and wish to reach a resolution by agreement with their needs and interests at the forefront;
- you do not wish to incur the costs and animosity generated by court litigation;
- you value retaining control over decisions about restructuring your financial arrangements or arrangements in relation to the children, but with advice from experts;
- you do not wish to hand over such decision making either to your lawyer or to a judge;
- you need the assistance of a lawyer to help you negotiate in face to face meetings.

Collaborative family law will not be the right option for you if:

- your main objective is to "seek revenge" on your partner;
- you are looking for a "soft option";
- you think that the process will allow you to "out-manoeuvre" your partner;
- you are hoping to get away with giving less than a full and frank financial disclosure!
- In cases where there is a history of domestic violence or other abuse, the collaborative family law specialists will need to consider very carefully whether the case is suitable for the collaborative process and are likely to insist on the involvement of other professionals in the process to ensure that the interests of you, your partner and any dependant children are adequately protected and represented.

6. How much will it cost?

- As with the conventional legal process, different lawyers have different charging rates. The lawyer you instruct will explain to you the basis of their charging structure and will go through their firm's terms of business with you.
- As long as you and your partner act in good faith, provide the information requested of you within the timescales agreed and cooperate in the process, the collaborative process will inevitably be quicker and cheaper than the traditional, court based process.

- The issue of how the costs of collaborative process are to be met can be addressed at the first 4 way meeting. Unless there is an agreement to the contrary however, you and your partner will each be responsible for your own solicitor's costs and will be invoiced monthly so that you receive a regular update as to the costs position.

7. How can we get a collaborative case started?

- Other solicitors in Sydney and in other areas also offer collaborative family law as a part of their family law services. It is essential that both parties have collaboratively trained family lawyers.
- If you think that your partner may be interested in trying collaborative family law as a way of resolving your dispute, we can write to your partner suggesting collaborative family law and send him/her this brochure, or you can discuss this with your partner directly.
- Most collaborative family lawyers (and other professionals) belong to Collaborative Professionals (NSW), which has a website from which you can obtain information and where you can find a referral to another collaborative lawyer the website is **collabprofessionalsnsw.org.au**.