# Family First by Market Forces?

The traditional adversarial model of conflict resolution amongst divorcing spouses and families tangled up in the Family Law process is coming to an end.

As a nation, we have subconsciously already written off the court room as an old-fashioned forum for problem solving, too basic to come to terms with the mind-numbing complexity of Family Law and too dispassionate to conjure up creative solutions.

But are the winds of change being driven by a nation's dissatisfaction with its justice system or has the economic downturn offered England a golden opportunity to make British Family Law a leader in its field?

Collaborative Law is not a new concept and was the brainchild of Stu Webb, a US based attorney, who wanted to find a way of making family disputes less acrimonious and in 1990 he wrote a now iconic letter to a judge in the Minnesota Supreme Court outlining his proposal, which founded the Collaborative Law process. As the name suggests, it is a cultural process where the law is used flexibly and compassionately with the underlying ethos of putting the families' wishes and needs first before the restrictive and all too bullish process of the old adversarial system.

The process works on the fundamental understanding that parties sign an agreement to keep the dispute out of the court room and that resolution should be attempted through a series of negotiations and where necessary the use of financial advisors and family counsellors. This style of dispute resolution has appealed massively to Americans as a nation but there are cultural differences between the English and the Americans which may stunt the growth of Collaborative Law unless the professionals within it modify the process to appeal to us Brits.

Americans have long been comfortable with the use of professionals like psychiatrists to guide them in their emotional management of themselves and their families but ask an English person to visit a shrink and they will shrink in horror at the thought. The English have always prided themselves on their ability to work through their own problems and the use of professionals with medical backgrounds for example, immediately signifies to the British Mind that there is something radically wrong which needs medical intervention. It is not that the English hate to take direction, we just like our direction to be commensurate with the dilemma and where most families were happy and healthy before coming to court, the possibility that their lives might get dissected by doctors and other well meaning professionals just puts our collective noses out of joint (at which point, ironically, medical intervention will probably be necessary).

There is a way of keeping the collaborative process light and fluid without overdosing on myriad opinions; life coaches and family counsellors, if kept within Stu Webb's vision, namely a philosophy which seeks out what the family needs rather than tells the family what it can have as a starting point, could be instrumental in removing the sub texts of mistrust and anger and allowing the parties to at least acquire enough civility in a relatively short period of time to empower them to problem solve and reform their shifting family unit. With the integrity and dignity of each family member intact, the process gives parties the chance to not only move forward but to infuse their metamorphosed family unit with strength and

optimism; a priceless gift which the adversarial process cannot and will not ever be able to offer within its arsenal of remedies for the fractured family.

By its very nature, the collaborative process is able to respond faster and more pragmatically to family dilemmas; by putting families in the driver's seat, the negotiating table becomes a cornucopia of conciliatory ideas. It is almost too good to be true: what then, is the reason behind this new found generosity amongst a population of would be piranhas and aspiring Great Whites (I refer of course, to lawyers)? As a breed, lawyers like to be in control; it's not so much a case of control issues but more control tissues: the urge to direct, to be at the front of every battle line and to commandeer the ship home is in the blood. So, why are lawyers letting families call the shots? The answer may lie in the current economic climate: with the number of divorces rising and peoples' decreasing ability to meet financial obligations, Collaborative Law offers the perfect solution for partners and practitioners because it removes court costs if the parties can negotiate successfully and lets them decide how much they are prepared to spend to come to a resolution. The advantage to the solicitor is perhaps that they keep the parties in discourse and at the negotiating table for longer than they would otherwise (and these are all billable hours in the world of the lawyer).

However, it is also clear that solicitors are feeling the economic downturn coupled with new proposals which effectively reduce Family Law legal fees and in tandem remove potential clients from their grasp and they perhaps have no choice but to look at more flexible alternatives which ultimately give their clients more control on how their pounds are spent.

There are incentives though, some created by the original collaborative movement, to both bolster the lawyer's motivation to use Collaborative Law as well as the client's, and some which have unwittingly played a part in making this more holistic approach, approachable. Part of the way the process works is that it insists on removing the original lawyers from the case if the parties cannot agree, which would then force the troubled family to seek new representation should they wish to litigate. This is meant to act as a deterrent, to gently coerce parties into accepting the conciliatory nature of this new process and simultaneously gives the lawyer some assurance that they will handle the case for a more defined period of time, even if still rendered vague by the implicit anomalies in family disputes.

Once again, we can see a cultural difference between America and England as the deterrent has worked well in the States, but not so well here. It seems that our emotional attachment to our lawyers supersedes our attachment to our cause and many parties going through the Family Law process have declined to use the collaborative method upon suggestion by their solicitor because they fear litigation and want their chosen lawyers by their side if the worst should happen. It would be unfair to suggest that solicitors are aware of the subliminal power they hold over their clients but it is a real obstacle for the collaborative process in England and perhaps the method would work better here if we were assured that our preferred legal team would be by our side in court should we need them. At present, the collaborative process is being largely overlooked for this reason and collaborative lawyers are finding themselves engaged in adversarial techniques because their clients don't want to lose them.

However, there is another incentive to consider Collaborative Law and it is rather surprising as a factor. Whereas once, it was only high profile families that feared media intervention in their family affairs, the new media reporting proposals may make the lives of far less high profile families very difficult and Collaborative Law with its promise to keep families out of court, may just get the exposure it needs to increase its popularity. A quirky off shoot of the

Collaborative Law Movement, the new media regulations for 2009 and beyond will play a part in the choice between court and conciliation.

Since its importation in 2003 from the United States, Collaborative Law has found a voice not just with lawyers but with counselling and therapeutic communities as well as the financial industry and in 2006 Sir Mark Potter presided over a formal launch of the practice here in England. There are currently over 1,200 collaborative lawyers in Britain and many have attended workshops to broaden their understanding of how family law affects families both legally and just as importantly, emotionally.

Collaborative Law is an international phenomenon, responding to the socio-economic needs of families but it has a compassionate core; communities all over the world are now discussing and using the collaborative method and with America as the founding father of this movement, it is very tempting to cut and paste the process into our legal system 'as is'. Yet to do so would be counterintuitive. The model works so beautifully in America because it was designed to meet the needs of a particular nation; if we are to cultivate the method to its fullest potential, we need to apply its flexible philosophy to the way we practice law and allow the family to guide the infrastructure of our British Model. If we succeed in doing that, then we may have succeeded in changing the face of English Family Law forever and for the better.

Ultimately, the answer to the question of whether or not the change in our legal culture is socially or economically driven may be enigmatic in itself; it is tempting to consider that both pressures played their part. Yet, to grab the opportunity with both hands is surely what matters; with professionals from across the board now willing in ever increasing quantities to ask the family what solutions they can offer them rather than insisting they choose from a prescribed and limited collection of processes, there are more reasons than ever to collaborate. The family, in all its diversity, has finally been given the place it deserves in society: First.

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