



Association of Collaborative Practitioners

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Oonagh Buckley,
Deputy Secretary General,
Department of Justice,
Chairperson of Family Justice Group,
Department of Justice,
51, St. Stephen's Green
Dublin 2.

26th February 2021

Re: Family Justice Oversight Group

Dear Ms Buckley,

We are in receipt of your letter of the 19th December 2020, for which we are very much obliged.

As Chairperson of ACP and as a Psychotherapist, I have worked together with 3 Board Members of ACP namely; Corry McMahon Psychotherapist, Gearóidín Charlton and Patricia Mallon, both of whom are solicitors, in order to respond to your letter.

In the course of recent weeks, we have collaborated together in producing our submission in which we have attempted to set out the process of Collaborative Practice in a manner which is easily understandable and accessible, and a blueprint of how we perceive its role in the work of the Family Oversight Group Consultation Process.

In the time made available to us, we have put together the attached submission. We are very happy to make ourselves available to meet with you should you require further clarity or information and look forward to representing ACP through this process.

Given the importance which we attach to the operation of inter-disciplinary teams in conflict resolution, we as board members and on behalf of our board and membership, are very happy to make a presentation to you and your associates involved in this consultation, for the purposes of looking in more detail at the importance of inter-disciplinary team process and its importance in any serious consultation regarding conflict resolution into the future.

We look forward to hearing from you.

Yours sincerely,

Elaine Hanlon
Chairperson ACP

Directors Elaine Hanlon; Colm Murphy; Ruairi O'Brien; Gearóidín Charlton; Jemima Brookman;
Patricia Mallon; Corry McMahon; Liam Purcell

Submission to the Family Justice Oversight Group On behalf of the Association of Collaborative Practitioners

Introduction

The Association of Collaborative Practitioners was originally set up by a group of Solicitors from Cork in 2006, following a 2-day training session delivered by Pauline Tesler, an international leader in the movement, co-founder and past president of the International Academy of Collaborative Professionals (IACP). The training introduced the practitioners to a new method of conducting Family Law. It consisted of a practice that was more person-centred, where couples could self-determine how they might separate for the benefit of the child/ren and the family as a whole.

The practice has developed into a recognised model of dispute resolution in family separations, throughout the world on 5 continents, having had its origins in Minnesota, where Stu Webb first suggested a new way of practising Family Law in 1990. What Stu envisioned was a model, where lawyers could not, under any circumstances, go to Court over any issue. Over time, this has developed into a multidisciplinary process, however the central plank of Stu Webb's thinking remains the same.

The Association of Collaborative Practitioners (ACP) is now a multi-disciplinary membership consisting of Psychotherapists and Psychologists known as Collaborative Facilitators, Child and Financial Specialists and Collaborative Lawyers. ACP also organises training annually in the Inter-Disciplinary Process together with Refresher Training.

The ACP welcomes the invitation from the Family Justice Oversight Group to be part of the consultative process. We would like to make the following submission under relevant headings as set out at appendix No. 1 of the Department of Justice invitation of the 18th December 2020:

1. Reimagining the structure of civil legal aid in family justice

1.1. Should a greater focus of the system of civil legal aid be on the promotion and use of non-court based solutions to family issues where these are possible.

- 1.1.1. Yes. We believe Collaborative Practice is a holistic, non-court based model that is family-centred and child-centred as well as interdisciplinary, thus bringing all necessary professional support into

the process on a neutral basis to support the needs of the separating couple and their family in the formalising of their separation.

1.2. In addition to mediation, is there scope within a civil legal aid system for utilising other ADR mechanisms including, but not exclusively, arbitration and collaborative law as a means of achieving family justice?

- 1.2.1. Yes. In the traditional litigation model currently practised in the Irish Court system, there is a tendency to view litigants as isolated individuals with self-contained bundles of legal rights and entitlements as opposed to taking a global view and having regard to the entire spectrum of human needs. This has the potential to be destructive on future relationships within the family, detrimental to children and may well lead to further court involvement in the future. While the Court system has a most important role in Family Law contentious matters, there is potential for a new re-imagined process, which is kinder to the participants and ultimately may yield a more sustainable result, as the participants craft their own agreement with the assistance and guidance of the interdisciplinary team.
- 1.2.2. What makes Collaborative Practice an attractive model of ADR is its versatility. Using the interdisciplinary nature of the process, it can adapt to address the individual needs of a separating couple/family. Utilising one neutral collaborative expert, instead of two adversarial experts, not only reduces financial cost, but emotional cost also.
- 1.2.3. Collaborative Practice is a model of conflict resolution which operates on the level of team participation, consisting of suitably trained professionals (both in their professions of origin and collaborative training) in order to work with couples so as to assist them in resolving disputes respectfully without going to Court and in the best interests of the family as a whole.
- 1.2.4. Frequently, Court users including the lawyers, struggle with the tools available to families in Irish courts. These tools are blunt instruments because they are restricted to a limited set of options available and are not conducive to the sensitive and personal assistance that families need in times of fundamental transition.
- 1.2.5. The Attorney General Paul Gallagher SC, while attending The Second European Collaborative Conference hosted in Cork by ACP in 2008, spoke eloquently about human dignity and fair solutions and the need for solutions to fill needs of the dignity of people involved in dispute. He said “if law is something that grows from human experience, humanity should not be twisted into law but rather human experience should dictate what the laws should be doing.”
- 1.2.6. Our legal system was designed originally for criminals, tortfeasors and contract breakers. Whilst all of these breaches of the law can be found in Family Law and need to be dealt with accordingly, a very large

number of Family Law cases need a more user friendly, interactive approach, where the parties are active participants in the modelling of their future and the future of their family. This is possible through the use of the interdisciplinary model. Our traditional paradigm does not include such participation in the current legal system.

1.3. Why Collaborative Practice?

- 1.3.1. Holistic approach.
- 1.3.2. Child-centred.
- 1.3.3. Focus on future wellbeing of the family.
- 1.3.4. Promotion of caring, loving and involved relationship between the children and both parents which benefits all and the wider society.
- 1.3.5. Multidisciplinary expertise - The Collaborative Process allows for the integration of expert neutral assistance at all stages of the process. This results in a more holistic outcome which aims to cover all material issues for the participants now and into the future.
- 1.3.6. Independent legal advice is present in the room.
- 1.3.7. Practitioners use a skill set based on Principled Negotiation as proposed in the Harvard School of Negotiation, used also in Mediation, in order to create value. Collaborative Practitioners work to negotiate constructively without the necessity of seeking to gain advantage over the other side, because the focus is the best interest of the family as a whole and not winning or losing. In order to engage in a collaboration the parties sign a Participation Agreement, which commits all parties to the process including the Disqualification Clause, which prevents the Collaborative Lawyers from representing the parties in any future contentious litigation. This is dealt with more fully on page 5, in the section relating to the differences between Collaborative Practice and Mediation. This encourages Solicitors and Clients as well as the Collaborative Facilitator to fully engage with the process without the threat of Court at the first hurdle.
- 1.3.8. Better service user outcomes for the family as a whole
- 1.3.9. Participatory nature of Collaborative Practice means outcome is a direct result of both separating participants' contributions and therefore more likely to have continued adherence to outcome.
- 1.3.10. Ease burden on Court system - While the Collaborative Process has been empirically proven¹ to benefit the majority of separating couples who see the process through to completion, the Court system also is benefitted by the majority of the work being done outside the Court.
- 1.3.11. Judicial intervention may not be needed other than to rule a consent application.
- 1.3.12. Negotiation and creative problem solving to the forefront of the process.
- 1.3.13. Elimination/reduction in blame and threats.
- 1.3.14. Creation of value for both parties not win/lose.
- 1.3.15. Focus on relationships.

¹ Alexis Warner, 'Collaborative Divorce as an Alternative to Traditional Adversarial Divorce or Other Forms of Alternative Dispute Resolution'(2017-2018) 67 Drake L. Rev. Discourse 101.

- 1.3.16. Peace empowerment.
- 1.3.17. Reduction of unnecessary and destructive conflict and avoidance of litigation.
- 1.3.18. Substantial reduction in cost of protracted Family Law litigation. Alan Shatter TD at the Launch of the Dolphin House Initiative on the 16th May 2011 said “I think it is worthwhile noting the economic and financial benefits of mediation, both to the parties themselves and society generally. It is estimated that the legal aid costs of a mediated family law dispute are about half those of a litigated dispute. In addition, the costs incurred by the State in providing such legal aid is off-set by the costs associated with litigation, such as court time, not to mention the psychological and physical consequences on the families involved, which may ultimately cost the State more.”² This also applies to the Collaborative Model.

1.4. How?

- 1.4.1. **Court System.** As Collaborative Practitioners do not make contentious applications, the Court Service to accommodate collaboratively agreed and other ADR consent applications by providing a dedicated court list and listing dates for rulings quickly in all jurisdictions of the Family Court, once the Collaborative Practitioners have had the clients complete a legally binding agreement, which will be ruled by the Court. This also adds incentive to those deciding what approach to take to the formalisation of their separation.
- 1.4.2. **Pilot Scheme.** The availability of the Dolphin House Initiative³ style ADR centre at every courthouse for all jurisdictions of Family Law. These would provide information at the very initial stage about ADR options including Collaborative to potential litigants and the appropriate ADR offered on a needs basis. This would be greatly assisted by proactive Judges who encourage a collaborative approach at every stage of the litigious process resulting in the suspension of those proceedings for the duration of the collaborative process.
- 1.4.3. **Mandatory** Alternative Dispute Resolution information meetings for all potential litigants at every jurisdiction of Family law. We do not however, advocate that ADR itself as an option be made mandatory.
- 1.4.4. **Interdisciplinary Training.** We see the importance of imparting knowledge and organising training so that all professional participants in Court system are aligned in their knowledge and understanding of the options involved in dispute resolution, how they work and how to access them in a timely manner. This approach enables a more efficient case management by Judges and Court Officials by seeking to have suitable cases dealt with through Collaboration or Mediation.

² Alan Shatter TD, ‘Launch of the Dolphin House Family Mediation Initiative’ (Address at the Dolphin House Courthouse, 16th May 2011) <<http://www.justice.ie/en/JELR/Pages/SP11000060>> accessed 26th February 2021.

³ Ibid.

- 1.4.5. **ADR** would assist greatly in frontloading the system with ease and active case management and encourage litigants to seek to resolve their issues in such a cost-effective manner.
- 1.4.6. **Increased funding in the public sector.** This is essential so that appropriately trained and up-skilled Collaborative Practitioners are readily available. Research from the UK shows that the reduction in availability of Legal Aid led to a corresponding reduction in parties attending a Mediation Information Assessment Meeting⁴.
- 1.4.7. **Increased access and information.** Solicitors are currently the gatekeepers to all legal services, being either traditional litigious services or ADR methods. Unrepresented parties who cannot afford a Solicitor are often unaware of the Collaborative Process. In Australia, Family Relationship Centres (FRC) have been established. FRC's in Australia are the first port of call for families experiencing issues whereby they can receive information on all options available to them without having to consult a Solicitor. FRC's act as a centralised unit which outline appropriate next steps to parties, bearing in mind the realities of their individual situations including but not limited to domestic abuse, child protection and the like⁵
- 1.4.8. **Paradigm Shift.** Key to any successful integration of the collaborative model is the paradigm shift. This means a move from the traditional or litigation paradigm of Court-based model to the new family-centred paradigm that prioritises the interests of the family as a whole and seeks to create solutions that address the concerns and interests of all the participants. That puts ADR, and particularly Collaborative Practice, as opposed to the traditional adversarial approach at the centre of Family Law. This involves active encouragement from Solicitors and the Judiciary alike in moving away from the adversarial approach to one of cooperation amongst parties. The 'judge-led' approach has been seen to be successful in Singapore where the judges are given power to direct parties to proceedings to attend ADR. In Singapore, order for costs can be made against parties who do not comply with the process.⁶
- 1.4.9. **Multi-Disciplinary Courts.** Establishment of specialist multi-disciplinary courts which have Collaborative Process as a fundamental part of the system. This approach was recently endorsed in Australia following an inquiry by the Australian Government, regarding the role of financial specialist, child and psychological experts.⁷

⁴Andrew Moore and Sue Brookes, 'MIAMs: a worthy idea, failing in delivery', (2018) P.C.B. 1, 32-39

⁵Lola Akin Ojelabi and Judith Gutman, 'Family dispute resolution and access to justice in Australia', (2020) Int. J.L.C. 16(2), 197-215.

⁶Eunice Chua, 'Mediation in the Singapore Family Justice Courts: examining the mandatory mediation model under the judge-led approach', (2019) CJQ 38(1), 97-110.

⁷Ojelabi and Gutman (n 2).

1.5. How does Collaboration differ from Mediation?

In this section we set out in detail the Disqualification Clause, how it works, why it works and its importance, as it is central to Collaborative Process and thus a full understanding is essential. The remainder of the differences are set out in bullet form, as they do not require such detail.

1.5.1. Disqualification

- 1.5.1.1. Lawyers, who are new to this model, frequently comment that they have been working in this way for many years and settle almost all cases, so why should they disqualify themselves? The answer to this can be set out in the following points:-
- 1.5.1.2. In family matters, with the exception of custody and access disputes, the “best result” equals the largest piece of the financial pie. Distributive bargaining is king and winning is paramount. To therefore suggest that lawyers can work within this playing field and temporarily suspend tactical and strategic considerations is a hypothesis that ignores the realities of litigation. Of course, lawyers have always had good relationships with one another which have allowed them to eschew strategic concerns and use principled methods of negotiation. However, the litigation template dictates the conduct of a file and so, if a lawyer ignores litigation tactics and strategies, at least within the litigation paradigm, he/she is not providing the best service for the client. Conversely, within the litigation paradigm, to focus on the maximum utilisation of strategic moves to best position a client for the largest piece of the litigation pie, is usually counterproductive in the building of an atmosphere of trust for settlement as well as being destructive of continuing familial relationships.
- 1.5.1.3. The investment of the Collaborative Lawyer in the process is so significant that if the negotiation breaks down the Collaborative Lawyer loses his or her client. Without the disqualification, the pace at which, in the face of an apparent impasse, the lawyers bolt from the negotiation table to the Court, potentially increases. This has been referred to as the “gun slingers dilemma”⁸ of the old Wild West. He who puts his gun down first risks being shot and killed by Wild Bill if, Wild Bill does not put his gun down also. So, the disqualification agreement becomes the contractual equivalent of gun free town or to put it another way the smoking gun is taken off the table.
- 1.5.1.4. It is not possible to threaten Court and the disqualification liberates the parties to do what this system allows them to do best, problem solve in a safe, clean environment where the

⁸ Nancy Cameron, *Collaborative Practice: Deepening the Dialogue* (Nancy J. Cameron, 2004) pg 18.

success is measured in terms of finding the solution. Lacking court as a dispute-resolution option, lawyers have no alternative but to rise to the challenge of problem-solving.

- 1.5.1.5. The process of guiding the parties through the delicate negotiations does not come easily to lawyers which makes the Collaborative Facilitator. Traditional skills have to be re-learned and in particular, Collaborative Lawyers have to learn to cede control over the substance to the clients while remaining custodians of the process.
- 1.5.1.6. There are different roles and skills for the clients and professional team. The competent Collaborative Practitioner firstly detaches from the traditional win/lose outcome as a measure of success. The Collaborative Practitioner becomes a specialist in managing conflict and guiding negotiations. The Collaborative Practitioner works to preserve what he/she can out of the relationship so that the transformed family unit can function on its best possible level and can for example go to family occasions.
- 1.5.1.7. Collaboration facilitates a team model introducing neutral experts when required.
- 1.5.1.8. Legal advice is available throughout the collaborative model in the session.
- 1.5.1.9. This allows each party to have independent legal advice on hand, which Mediation does not facilitate. This can be a most valuable asset for the client and can assist greatly in the decision-making process, when coming to agreement. It saves time and cost and contributes greatly to efficiency. It can also isolate and name issues that need attention.
- 1.5.1.10. A legally binding agreement/terms of settlement for ruling can be finalised, drawn up and executed in the room on the day of the agreement.
- 1.5.1.11. Collaborative Lawyers share the risk of failure through the disqualification clause in the participation agreement which is not the case for lawyers involved in Mediation.
- 1.5.1.12. Collaborative Practice can aid disparity in negotiating power between the participants, providing additional support from the Collaborative Facilitator/s and the Collaborative Lawyers.
- 1.5.1.13. There is less room for misinterpretation of messaging when clients, lawyers and mental health professionals are all in the room together.

1.5.1.14. Family law is driven by emotion. People are at their most stressed and not working from their rational brain. Having an interdisciplinary team can help manage difficult emotions as they arise in the process.

1.6. Legal Aid in family justice – more than legal advice and representation!

1.6.1. Absolutely! There is room for psychotherapists, psychologists, financial experts, and child experts to be part of the Legal Aid system in family justice. Why only lawyers? Collaborative family facilitators who are generally psychotherapists or psychologists are far better placed than lawyers, (the majority of whom have no training or expertise in affairs of the heart or children) to deal with, not just parenting issues, but also emotion-fuelled impasses that occur.

1.6.2. The screening of clients suitable for Mediation or Collaboration is essential, as these models do not suit every client. A screening process is therefore required to ascertain suitability as well as an understanding of what is involved. ACP members have reported the benefits of an Option Consultation, frequently but not uniquely carried out by the Collaborative Facilitator. The various options of conflict resolution ranging from kitchen table negotiations, to Mediation then Collaboration and finally litigation through the Court are discussed in detail with the client. This method is useful in determining a full understanding of what is involved as well as suitability for the ADR models. In our view the Legal Aid Board would be greatly assisted in its work if such a process were to be considered as a prerequisite for Mediation or Collaboration.

1.6.3. The Irish Legal Aid Board was also very much ahead of its time and to be lauded as the first national body to engage in a remarkable campaign of having many of their lawyers trained in Collaborative Practice. The Board expended substantial resources having their interested solicitors trained in Collaborative Practice in or around 2009/2010. There is therefore a large cohort of trained Solicitors who have the expertise in-house through the Legal Board in Ireland. As Collaborative Practice has now developed into an interdisciplinary model, it would be appropriate to ensure that the trained Legal Aid lawyers would avail of training both by way of refresher of basic Collaborative Training as well as the Interdisciplinary Model. This is readily available through the Trainers attached to ACP.

2. The Family Courts

2.1. What issues should always be prioritised for hearing?

Child issues, domestic abuse, maintenance impasses spring immediately to mind. Matters relating to children should be prioritised. However, while issues relating to child abuse are usually deemed to be unsuitable for ADR, given the consensual nature of that process and the need for equality among the parties, the Family Courts must always prioritise child safety issues as well as domestic abuse, so as to afford protection to families in such situations.

2.2. What are the professional supports both privately funded and in the case of eligible persons, publicly funded that most benefit the participants in the process or the court in dealing with family cases (examples include psychologists social workers family support services, anger management training etc.)?

2.2.1. The professional supports, both privately and publicly funded where appropriate, would consist of an investment in the interdisciplinary model of conflict resolution. In Collaborative Practice, we have been operating an inter-disciplinary team model for a long number of years involving trained professionals from lawyers to mental health professionals, child specialists and financial specialists. The basic inter-disciplinary team in Collaborative Process consists of a Mental Health Professional in the role of one or two Collaborative Facilitator/s and two collaboratively trained lawyers representing both parties. These three/four professionals work as a team from the outset. Additional team members can be introduced when and if needed such as a child or financial expert.

2.2.2. There is no doubt that the involvement of a Collaborative Facilitator from the outset is impactful and assists with the management of the emotional issues arising during separation.

3. The Collaborative Team

3.1. Collaborative Facilitator

3.1.1. The Collaborative Facilitator, who usually comes from a background of Psychotherapy or Psychology, will be introduced to the parties either through a referral from lawyers or in the context of their

professional work meeting clients. The Collaborative Facilitator assesses clients for suitability for the Collaborative Process identifying skill sets, key areas of difficulty and areas requiring support or upskilling.

- 3.1.2. The process has two options (1) the team with one neutral Collaborative facilitator or (2) Two collaborative facilitators one aligned to each participant. There are advantages to both models. The one Collaborative facilitator model gets a better sense of the dynamic between the couple together from the outset as well as seeing them individually while maintaining neutrality.
- 3.1.3. The Two Collaborative Facilitator Model does not have to struggle with the challenges of neutrality and can provide more individual support to a participant. It is less challenging in this model for the collaborative Facilitator to advocate on behalf of one participant, particularly in situations of an imbalance in power or lack of confidence in self representation in the room. The two Collaborative facilitator model can provide more channelled support in the more challenging cases.
- 3.1.4. The Collaborative Facilitator plays an extremely important role in the process as he/she ensures a clear structure and process. He/she educates and upholds at all times the core-ethos of the Collaborative Process and enables all the professional team members' skills to be used effectively. The Collaborative Facilitator ensures that the Collaborative Process is managed effectively to minimise costs and maximise efficiency and effectiveness. The Collaborative Facilitator is the central point for all communication and coordination. He/she works with the parties to create clear goal plans which are indispensable later on in the process as issues can arise between the participants which could then be looked at in the context of the goal plans.
- 3.1.5. In the One Collaborative Facilitator model the Collaborative Facilitator may assume responsibility for identifying and managing the appropriate scheduling, pacing and timing of meetings. They may also ensure that meetings are balanced, clear, informative and effective. Furthermore, they enable and support clients to understand the voice and the needs/concerns of the child effectively.
- 3.1.6. The Collaborative Facilitator/s also manage/s and promote/s an atmosphere of problem identification and option exploration as well as enabling professional skills and expertise to be used effectively. The Collaborative Facilitators also ensure/s a tone of communication which is respectful of the collaborative ethos.
- 3.1.7. The role of the Collaborative Facilitator/s in empowering clients to maximise their skills is extremely important for effective participation in the Collaborative Process.

- 3.1.8. The Collaborative Facilitator/s also work/s with clients to create a clear tailor -made plan for each family/couple/client which can be supported or reviewed as the process continues and which also enables clients to develop a clear realistic thinking re; goals and potential outcomes.
- 3.1.9. The Collaborative Facilitator/s can also work with clients to develop communication structures and co-parenting skills that would enable the family to function well post separation and divorce. Even when the process is finished, the Collaborative Facilitator/s can be there also to support them should issues arise which require their assistance.
- 3.1.10. It is accepted that the resourcing of the two Collaborative Facilitator Model as opposed to the one Collaborative Facilitator model may favour the One Collaborative Facilitator Model.

3.2. Collaborative Lawyer

- 3.2.1. The lawyers in the collaborative team give their own clients legal advice and guidance both outside of the collaborative 5/6-way meetings and during the collaborative 5/6-way meeting as needed.
- 3.2.2. While minimising correspondence, the Collaborative Lawyer engages with the Collaborative Lawyer on the other side for the purposes of creating a good working relationship and exchanging views with regard to the issues at hand in the specific case, drafting the Participation Agreements and ensuring that full financial disclosure and sworn Affidavits of Means are exchanged promptly.
- 3.2.3. The Collaborative Lawyer attends all meetings with his/her client when the full team of one or two Collaborative Facilitators, two Collaborative Lawyers and two clients are present and is on hand to guide, assist and advise as required.
- 3.2.4. The Collaborative Lawyer operates as part of an inter-disciplinary team and as such, is also in a position to engage on a one- to- one level with the client of the other Collaborative Lawyer. It is very powerful to meet the partner/spouse of the client and offers an opportunity to underpin a feeling of support and confidence in the team and the problem- solving ability. It de-mystifies frequently held assumptions with regard to the nature of the opposite lawyer in the traditional model.
- 3.2.5. Collaborative Lawyers also take part in option creation and assist clients in the evaluation of options during the Collaborative Process. Option creating can frequently be the bedrock of problem solving and a solution based focus. The clients are guided and supported through this by the Collaborative Facilitator as well as the Collaborative Lawyers.

3.3. Teamwork

3.3.1. Team-work provides a very clear structure where each team member has their own skill set that he/she brings to the table. It can create efficiency as preparation prior to meetings is required in order for the meeting to be able to proceed in an efficient and cost-effective manner. Each member of the team understands his/her role implicitly and is not required to participate in the meeting otherwise than in that role. This obviates the necessity for lawyers over many years having had to manage emotions as well as legal and financial issues as they arise. Each team member has 360 degree vision of all matters at issue in the particular case and this provides a strong structure for the participants and enables meetings to proceed as efficiently and effectively as possible.

3.4. Financial or Child Specialist

3.4.1. It happens that the expertise required by the parties in order to formulate a way forward and come to agreement involving other professionals can from time to time be required, such as a Financial or a Child Specialist.

3.4.2. With regard to the Financial Specialist his/her role is to assess the family finances and/or pensions as per the fully vouched Affidavits of Means provided by both parties. He/she will view the documentation having first of all being trained in the Collaborative Process and therefore have a clear understanding of his/her role. The financial specialist can seek to speak to the clients separately or together with or without their legal advisors. Ultimately his/her role is to make suggestions with regard to the documentation furnished re; potential financial solutions available to the separating couple which would maximise the assets and achieve the interests or concerns of the parties. The cost of the Financial Specialist is borne either by the participant with the higher income or alternatively can be shared between the parties, one expert instead of two reducing the overall financial burden of costs for the participants.

3.5. Child Specialist

3.5.1. The Child Specialist has a similar type role in as much as he/she is neutral and has the function of seeing the children and reporting back to the parents on the mental health of the children, the concerns/worries which the children have with regard to the separation and any other issues pertinent to the matter. This can be done by inviting the mental health professional into the meeting either with lawyers present or only with the parties and the Collaborative Facilitator. This is a most powerful method by which to deliver to separating parents the voice of the children in a way that is non-threatening and informative and in the best interest of a family as a

whole. Depending on the age of the children, the child specialist may also speak only to the parents in order to guide them through age related issues that might arise for each child as they move through the separation process and into a new family structure.

Voice of the Child

4.1. Collaborative Process is designed to give an effective voice to all children involved in the process. The voice of the child is an essential consideration for the parties in reaching their agreement, therefore great care is taken to ensure the voice of the child is listened to and understood by the participants. It is fostered in a favourable environment as opposed to a combative environment. It avoids the determinative approach adopted by a Section 47 assessment.

4.2. **How best to incorporate the voice of the child.**

4.2.1. The family structure is always at the core of Collaborative Practice. Both the changes in the family structure and how they will impact on both the parents and children are discussed and supported throughout the process by all members of the Collaborative Team especially the Collaborative Facilitator (whose primary profession is a Psychotherapist or Psychologist). Clear and concise researched information and practical advice is shared with the separating couple with regard to what impacts negatively and positively on the child throughout the process of separation, divorce and beyond.

4.2.2. Where necessary a collaboratively trained Child Specialist (whose primary profession is a Child Psychotherapist/Psychologist) is invited into the process to meet with the children and in turn bring the child's voice into the process.

4.2.3. As a part of the process the Collaborative Facilitator then in turn creates a parenting plan for the new family structure (the separated family) with the parents. This parenting plan will incorporate the needs of the child as understood by the parents and where necessary the Child Specialist, and will incorporate all aspects of the new family structure to encourage cohesive parenting moving forward.

4.3. **How can the proposed new system of family be made more child friendly?**

4.3.1. The Interdisciplinary Team structure favoured in Collaborative Practice is a powerful factor in rendering our new system more child friendly as it consists of suitably qualified professionals, who support

the child in family disputes and make their views known to their parents. In turn the other members of the Collaborative Team endeavour to hear and take on board both the emotional as well as the practical needs of the child throughout the process, so that they are taken into account in the decision making process by the parents

4.4. How can we keep children informed within the Collaborative Process?

- 4.4.1. This is a vexed question answered differently by different professionals working in the area. At the same time, children are front and centre of the considerations taken into account when parents are separating. We have therefore posed a number of questions that may give clarity as to how to proceed in this difficult area as a separating parent, depending on the age of the child.

How do the parents inform children?

How much do they need to know?

How will they cope with that information?

- 4.4.2. These are some of the questions that will concern most parents during the separation process. In a lot of cases the children will know more than their parents think about what is going on in the family. It makes sense therefore and is important that they also have a voice and are heard so that misunderstandings can be clarified and information given in a clear and concise fashion having regard for the children's ages and maturity levels
- 4.4.3. When a couple uses the Collaborative Process, they get a chance to discuss their children's welfare with Collaborative Facilitators individually at first then at a meeting with the Interdisciplinary Team. They get the chance to air worries and concerns about their children.
- 4.4.4. The couple have the opportunity to speak about how they will keep their children informed and try reassure them that while their parents are separating, they still love care for children and will continue parenting together as a separated family.
- 4.4.5. If a couple at this Interdisciplinary Team meeting can agree that they are in a position to talk to their children about the separation from their point of view, it gives children an opportunity to understand what is happening and gives them a chance to talk about how they feel about the separation.
- 4.4.6. If this is not possible and the couple struggle here, it could be suggested that a Child Specialist be introduced to hear from the children and bring what they hear from the children back to the next meeting with all parties present. This can have a powerful outcome for parents to hear what their children feel and to get an understanding

about of what is going on for them. Therefore, this approach allows the Child's voice be heard.

5. Conclusion

- 5.1. In your explanatory note you have mentioned key themes for this phase in your consultation namely, training (including inter-disciplinary training) and the culture of family justice and its challenges.
- 5.2. With regard to training and in particular with regard to inter-disciplinary training, we as an organisation see this is as pivotal in relation to the creation of sustainable methods of conflict resolution which either do not involve Court at all, or involve Court only as a method of consultation and consent ruling.
- 5.3. At the centre of the idea of inter-disciplinary training lies a fundamental immutable fact relating to family law and that is it comprises what Nancy Cameron in her book called "Deepening the Dialogue" calls "a surprise ball of legal, financial and emotional dimensions"⁹. The traditional paradigm deals only with legal and financial dimensions in family disputes and essentially ignores the emotional dimensions which all too frequently can derail the process or entrench negativity and ill-feeling which in turn foments difficulty in family structures into the future.
- 5.4. For too long family lawyers have had to cope with legal, financial as well as emotional issues so as to be able to move matters along. Sadly however, family lawyers are not qualified in this department and have therefore been engaged in an area of work most alien to them, that is to say, in an area of inter-personal relationships where they are totally unskilled, outside of the realm of personal experience.
- 5.5. Our experience shows that it is possible, through the family court system to create a resolution, where judgements are handed down by judges, having heard evidence with regard to the issues at hand in family disputes. These judgments can result in a shallow peace but not always a deep resolution.
- 5.6. Deep resolution is however possible where agreements are discussed and agreed between the parties with the benefit of lawyers as well as mental health professionals as part of their inter-disciplinary team. By this method, all three aspects of the dispute namely, the legal, the financial and the emotional dimensions are addressed.

⁹ Nancy Cameron, *Collaborative Practice: Deepening the Dialogue* (Nancy J. Cameron, 2004) pg 9.

- 5.7. We are not aware that inter-disciplinary teamwork is an integral part of the mediation process. We believe that one of the most salient points of difference between the practice of mediation and the practice of collaboration in this country is specifically the work of inter-disciplinary teams in collaboration.
- 5.8. A large number of the members of ACP are themselves certified mediators and the inter-disciplinary team approach has been adapted by many of them in the area of mediation.

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