

Divorce Without Conflict?

By Margie Rutledge, for the Globe and Mail March 18, 2006.

Recently separated, Nick and Jessica are poised for a major court battle. But as Margie Rutledge writes, there are ways to split up without becoming enemies

If you've been in a grocery store lately, chances are you know all about Jessica Simpson and Nick Lachey's breakup. The former stars of the American television show, *Newlyweds: Nick and Jessica*, now face an ugly **divorce**. Supermarket tabloids are chronicling every moment of acrimony as the couple lurches toward a dramatic court battle. We may finally know who cheated when and who is at fault.

Titillating as a celebrity split may be, **divorce** does not always have to be bitter. In Canada, "no fault" **divorce** has been available since 1986 and there's a growing trend to have a "no court" split; that is, to separate collaboratively.

The process is interdisciplinary, says Victoria L. Smith, lawyer, collaborative family law trainer and adjunct professor at Osgood Hall Law School. Separation affects people financially, legally and emotionally, she says, so lawyers, financial advisers and parenting coaches all work together as a team looking at a couple's various needs.

A traditional **divorce** lawyer may begin with a boilerplate separation agreement and work to represent the "rights" of his or her client, according to legal precedent. On the other hand, collaborative practice begins with both the ex-spouses and their lawyers agreeing to focus on the "interests" of each party. Ms. Smith explains that when people focus on their interests, rather than their rights, the separation agreement is specific to that particular couple and the contents are more likely to be respected.

She compares the difference between collaborative practice and traditional matrimonial law to the difference between curling and bowling: "In bowling, you throw the ball down the lane and hope it hits the pins, but in curling, though you're working within a structured system, you yourself are sweeping away the impediments to create where you want the rock to land."

And the benefits are clear.

Nicole, a Toronto consultant, disagreed with her former husband on almost all significant issues: money, parenting and even their separation date.

"He set our separation date as the day he physically moved out and I set the date as when I wanted the separation, three years earlier. With the collaborative process, we found a middle ground. The emphasis is on each person's needs and wants being listened to, whether you agree or not," she says.

"It's important to help people normalize the process as a life passage," Ms. Smith says.

"Historically, when people lived to 40, it was normal to be married to one person. But now that we are living to 80 or 90 and, given the complexity of the world, **divorce** is normal."

Another advocate of collaborative process, Toronto lawyer Jacqueline Peeters, compares contemporary **divorce** to early experiences of employees beset with "downsizing."

"The first reaction of middle-aged men was horrible. But now companies help people look for new work. It's very different."

Practically, how does the collaborative process differ from the traditional method of creating a separation agreement and thereby setting the stage for life post-divorce?

Nicole and her ex-husband have a six-year-old son. To help solve differences in parenting, the ex-spouses each hired a parenting coach to work with them. "The four of us would meet to resolve parenting issues and create an initial plan. As things with children are always changing, our agreement will change," she says.

This recognition of the fluidity of human experience and movement away from the one, traditional family model (mother, father, children) allows people greater creativity and less shame in the process of reconstituting their families and going on with their lives.

Nicole says, "Had I not had a child involved, I wouldn't have been as motivated for an amicable settlement. The way things turned out, our son didn't have to endure the consequences of a nasty court battle and he's been fantastic about the **divorce**. He's been unscathed."

The first step in the collaborative process is for all parties, both former spouses and their lawyers, to agree to it. They agree not to go to court and, if court becomes an option down the road, the original lawyers resign from the process. Furthermore, both former spouses agree to put all their cards on the table.

"This isn't all altruistic," Ms. Smith says. "You have the most chance of getting your needs met if the other person does as well." She warns that the collaborative model is not for everyone and that there must be some level of goodwill for the give-and-take process to transpire.

"The criteria for success is not necessarily 'being on the same page'. It is recognizing how important it is to make the right choices. It requires people to be courageous enough to sit down with one another," she says.

Although lawyers are necessary to the collaborative process, their role may be less as legal experts or designers than as facilitators.

"As well, everyone acknowledges that the agreement is a living document," Ms. Smith says. "Some aspects will never change, for example, the financial elements. But some aspects are going to be dynamic. This includes child arrangements. What suits kids at 2 and 4 aren't going to suit at 14 and 16. We look at the kinds of things anticipated and the process for change."

And Ms. Peeters says, "When people recognize that no one gains from running out or getting the most or running down the other person, everyone is healthier. You don't have a broken home, you have a new family arrangement."

Nicole's experience corroborates this. "Things that could have been extraordinarily adversarial [a financial settlement based on the separation date, parenting issues] were worked out using the collaborative process. There's no winners and losers; everybody comes out with what they can live with."

When asked about the possibility of real "closure" to any experience as emotionally fraught as **divorce**, Ms. Smith says she sees "lots of people sharing Christmas, birthdays. I don't know why this has to be unusual.

"**Divorce** is really challenging and painful and it's an experience many of us will undergo. But the collaborative process gives people tremendous freedom and release."

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