

# Taking the warfare out of divorce

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By Jessie Moniz

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**A better way:** Honor Desmond-Tetlow and Jacqueline McLellan.

*Photo by Tamell Simons*

When Ann and her husband Robert (not their real names) decided to divorce a year ago it was one of the most painful times in their lives.

They were in their 30s and had been married for two years.

Although they wanted to part ways they wanted to remain on amicable terms.

They dreaded the idea of going the traditional litigation route involving lawyers battling it out in court.

"Neither of us wanted to have the adversarial experience," said Ann. "I didn't want to lose our relationship. Just because it was a dissolution of the marriage didn't mean we wanted to alter and become different people."

Instead, they decided to take a relatively new approach by seeking lawyers trained in collaborative law.

This is a family law process allowing couples who have decided to separate or end their marriage to work with their lawyers to achieve a settlement that best meets the specific needs of both parties and their children without the underlying threat of contested litigation.

In the beginning the couple signs a contract agreeing to come to an agreement within a certain number of meetings.

If they can't resolve their issues within this period of time their lawyers are disqualified from representing either one of them in any future family related litigation.

Collaborative law was thought up by a Minnesota lawyer, Stuart Webb, in 1990. He felt that the traditional litigation process was not always helpful to families, and in fact, was often

damaging.

"Emotions were very intense," said Ann. "Both of us felt the need to self protect ourselves. Choosing the collaborative law approach allowed us to recognise those feelings.

"With collaborative law, you don't have to declare warfare you can still collaborate and communicate."

Today, with the divorce over, Ann said she and her former husband can have productive conversations.

"There is still a level of respect given the process we went through," she said. "I don't disrespect him from what he did through the divorce process, and I didn't feel disrespected."

The couple had no children, but Ann thought the process would be a tremendous asset to couples who had children.

"It would give people the opportunity to organise and calmly and respectfully plan their future," she said.

She said the entire process took about a year, but could have been shorter under different circumstances.

"We pretty much came to our agreement in three meetings," said Ann. "What took time with some of the legal things stipulated in the agreement."

Although she still had to go to court as a divorce petitioner, she said that side of things was perfunctory.

"Everything had been prearranged during those meetings," she said. "I showed up and the decree nisi was granted. A degree nisi tells you that the divorce is almost completed.

"There was no need for any kind of questioning by the judge because everything had been agreed upon beforehand. It was kind of a rubber stamp. It was very quick."

She said on a cost level, it was cheaper for them to go the collaborative route.

"The normal process can cost more because one person says this, and the other person says that and affidavits tend to go back and forth.

"There is a fee attached to an affidavit each time it bounces."

She said when looking at this approach, couples should consider the integrity of both parties. Both people need to be committed to the process.

"If you walk away from the process you will be starting over with other lawyers," she said. "You can't have an ulterior motive. You have to believe in the process for it to work."

One of the challenges of undergoing collaborative law in Bermuda is that there is only a handful of lawyers who are trained in it and practising it.

Two of these lawyers are Jacqueline MacLellan, an attorney at Maclellan & Associates and Honor Desmond-Tetlow, a senior associate at Mello, Jones & Martin.

Ms MacLellan first became interested in divorce process alternatives after a chat with a marriage counsellor friend.

"A marriage counsellor came to me and said 'I do all this work trying to help these couples communicate.

"Sometimes I am not successful, but I am scared to send them to the lawyers because I know that all the work I did will be destroyed. Is there some alternative?' I said let me look into it."

Ms MacLellan first studied mediation, which is another alternative to the usual divorce route.

Mediation differs from collaborative law, in that with mediation couples each with a lawyer meet with a mediator who acts a judge figure.

She later moved more towards collaborative law.

"In collaborative law two clients meet with their lawyers present," said Ms Desmond-Tetlow. "It is a fourway meeting.

"The big difference from just having a settlement agreement is that beforehand they enter into an agreement that if matters aren't resolved in four or five meetings the lawyers will withdraw and won't continue acting for them.

"It builds up trust. People stop being afraid to say something for fear their lawyer will use it in court.

"The basis for that is that we are going into this to resolve it without using the court system and without having something drag on for years.

"They know that if no agreement is reached, everything they have disclosed will be confidential. It is a better and cheaper system for all involved."

Ms MacLellan said another benefit to the process was that the clients themselves dictated the schedule of what was discussed.

"They are the ones who come to an agreement that meets their individual needs," she said. "As opposed to having a judge who doesn't know them tell them how their future is going to evolve. It gives them control over the process. They can take as long or as little as they want. At the end of the day it is substantially cheaper than fighting it out in court."

Once the agreement is reached it becomes part of the contract between the couple which we file in court. It becomes a court order.

"Family law is so different from any other area of law because if there is children involved you have to keep dealing with each other," said Ms Desmond-Tetlow.

"You have to be civilised down the road and deal with each other. The sooner people learn to do that empower themselves and take control the better it is for their kids."

Ms Desmond-Tetlow said another advantage of collaborative law was that the clients were allowed to discuss the issues that had brought them to divorce.

"Sometimes the emotional turmoil does come up in the first one or two meetings," she said.

"In your typical settlement that stuff doesn't come up. It is relevant to family stuff because very often it is exactly that anger or hurt that is stopping people from moving on."

If the lawyers sense that there are more deep seated or clinical issues at hand the process allows for counsellors to be brought in.

If children are involved, a child psychologist might be brought in to do an assessment and advise the couple.

But they said that collaborative law is not right for everybody.

"There are sometimes red flags," she said. "If one party is not committed to the process or distrusts the other and thinks they are hiding documents and not being truthful, or they are just out to drag things on, we try to stop the process."