

THE BETTER DIVORCE

The current statistics for marriage breakdown in Ireland confirm that marriages are breaking down at a rate of one in five with middle aged couples most likely to be affected. This is a serious human tragedy which has relevance for all communities.

In Ireland we are good at dealing with death. We understand it and we respect the grieving process. At some time or another we may have advised a widowed family member or friend “to take their time and not to make any immediate decisions”. Generally, we are reasonably aware and patient with the highs and lows of their grief. We may not be fully au fait with the stages of bereavement being denial, anger, bargaining, depression, and acceptance but as a community we look out for our bereaved and try to be supportive of them through their difficult loss.

Ireland is a very young State when it comes to marital breakdown. Now science and medicine have finally got it across to us that family breakdown is a full blown bereavement with all the attendant very difficult and at times very destructive emotions. Grief and loss can breed intense fear which can show itself as denial, anger, and revenge.

In marital breakdown the husband and the wife have to make the most serious decisions for themselves and their children at a time when they are most unable to do so. They may be in denial, full of anger, depressed...

When we experience a very strong emotion – it’s called “flooding” – we cannot think, we cannot hear, think a rational thought, make a rational decision. Instead of either or both parents being supported out of their fearful behaviour and into healthier family focused behaviour the adversarial Family Law Court system, by its very adversarial nature, fuels these fears.

Despite the best efforts of well motivated Family Law Judges and lawyers the Court system is not the best system to support the family through this period of huge crisis.

Fear and anger driven Court Proceedings can have a detrimental effect on the family and extended family. Research shows the consequences also include major additional expense to the State with significantly increased use of the Health Services, Gardai, Social Welfare, and Assisted Education Services.

However if I ask my clients “do you want to be able to dance with your ex partner at your daughter’s wedding? Do you want to be able to attend the Parent Teacher meeting with your ex partner?” Most will answer with a resounding “Yes”.

This is where Collaborative Law comes in.

Collaborative Law is a method of alternative dispute resolution in family law cases based on the model where the parties, with their lawyers, sit at a Four-way Meeting working from an Agenda to resolve the matters at issue between the parties. The lawyers sign up to an agreement with the parties that in the event of the negotiations breaking down, those lawyers will not represent the parties in any subsequent family law Proceedings. There is a big buy-in for everybody – if the process fails, the clients have to start all over again with new lawyers and the lawyers lose their clients. Lawyers hate to lose clients!

- The process commits to no Court Proceedings with full disclosure and good faith bargaining at the centre.
- It is interest based as opposed to position based, cooperative as opposed to adversarial.
- The lawyers manage the process and the clients make the decisions for the family.
- The lawyers work together and fully cooperate with each other.
- The process requires honesty, good faith, and maturity. This process is not for everyone. Most people want to be able to behave in an honest, mature, and respectful manner. However there are times when the fear and pain of the marriage breakdown affects their behaviour. The Collaborative Law process uses the help of specially trained Family Coaches to support the parties through their separation and to help them get beyond their anger and fear and see what's best for themselves and their children.
- At all times through this process the parties have the benefit of their own individual lawyer's advice and support and this keeps a level playing field. When agreement is reached it is drawn up in full legal form. This is a hugely powerful family friendly process and it is significantly cheaper than Court Proceedings.

We Collaborative Lawyers believe that separation and divorce, when it happens, must happen in a way that is supportive of the family. We are working very hard to get this message into the public domain.

The Association of Collaborative Practitioners (ACP) is the Irish Body responsible for the practice of Collaborative Law. The ACP is part of the International Academy of Collaborative Professionals encompassing practitioners all over the world. Collaborative Law was devised in the United States in the early 1990's and has grown tremendously in the US, Canada, and Australia. It is developing very strongly in the United Kingdom and, in fact, the top five Family Law Firms in London (including those that have acted for Royalty and many celebrities) have recently announced that they are withdrawing from the adversarial system and are, instead, embracing Collaborative Law in all their family law matters.

To practice Collaborative Law, Lawyers must undergo extensive special training. Over 500 Irish Lawyers including the majority of the very well known Family Lawyers in Dublin and Cork have trained in the Collaborative process.

A full list of trained Collaborative Lawyers is available at www.acp.ie.

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