

Legal Affairs: A Kinder Court

By Lauren McKeon

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Richard Goodfellow's first instinct when he and his wife, Barbara, decided to divorce after 23 years of marriage was to phone a "classic Rottweiler" lawyer. Luckily for him — and his dental practice, based in Woodbridge, Ont. — his wife suggested something a little fluffier: collaborative practice. It's a relatively new approach to handling divorce and separation that essentially involves a series of negotiations between soon-to-be exes so that both their needs are met, and it could very well let you keep intact the business you've worked so hard to build.

Often times, says Victoria Smith, a director at Collaborative Practice Toronto, which has been operating for seven years, one spouse is more involved in the business, whether that's measured by the amount of sweat shed, or the number of shares owned. Spouses who are less invested are often willing, if not eager, to wipe their hands of the business, provided they get something in return. This bartering process is typically a quiet one and takes six months on average, says Smith, instead of dragging participants through the courts, which can take years. But it demands each spouse compromise to reach what is often a creative settlement, outside of the default of the law.

Either way, though, divorce is full of unknowns, and the big ones for Goodfellow were spousal support and dispersal of the assets — chief among them was Richard Goodfellow, DDS. While Goodfellow's wife sometimes worked as a bookkeeper for him, her involvement in the business — which Goodfellow started before their marriage — was minimal. Even so, Goodfellow felt a traditional divorce lawyer would have gone after his practice in an attempt to get his wife more cash. Using a collaborative approach, the solution was that the practice remained his, while his wife received the support she wanted. Goodfellow also declared sole responsibility for his children's university tuition — which he planned to do regardless.

Admittedly, in the case where only one spouse owns the business, the legal outcome might very well be the same as in more conventional divorce proceedings — it's the path to get there that differs. Plus, at roughly \$20,000 total, which includes costs for both parties, it's also cheaper than the traditional — or as advocates like Goodfellow term it "adversarial" — divorce, which normally costs at least \$50,000 per person. But, it's not all dollars and cents. There's also room to deal with the cocktail of emotions that come with separation: hurt, anger, guilt and fear. "More common than not, what we're also doing is helping to normalize that going through a divorce is not easy, it's tough," says Smith, who represented Goodfellow during his divorce. "It's full of loss, and sometimes pretty messy. It's a challenging journey in life."

Collaborative practice uses, where appropriate, a mix of both lawyers and some decidedly un-lawyerly types. "It's like everything you've ever watched on Oprah or Dr. Phil," says Goodfellow. In his case, six people sat in on each negotiation session: Goodfellow and his spouse, their two lawyers, a coach — to be the emotional hand holder — and a financial specialist to clearly interpret Goodfellow's business valuation and financial statements for everyone involved. The extra players, including the valuator, are neutral. Sessions also allow for a child expert — unnecessary in Goodfellow's negotiations, whose children are both in their 20s — to relay the child's desires back to the parents.

The sessions are informal — first names and finger food — and stick to the basic principles of the collaborative contract: a pledge not to go to court, an honest exchange of information and a solution that takes into account the highest priorities of both their spouses and children. “My wife and I didn’t get along toward the end,” says Goodfellow, “but I sat in a room with these five other ladies and had to be civil.”

Ultimately, says Goodfellow, most people just want the divorce over fast. With collaborative practice, there’s no time wasted in blame. “You leave not being angry and you get to move on much, much quicker,” he says. Plus, “The lawyers get far less money.”