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Hong Kong divorce professionals promote radical alternative to court action

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Collaborative law takes the mess and conflict out of divorce. Now a group of Hong Kong lawyers and other professionals who've successfully used it to avoid court battles aim to promote its wider use

The popular image of divorce sees husband and wife fight a bitter battle through the courts, led by their swashbuckling lawyers. No quarter is given as they trade insults and allegations, while their helpless children become pawns.

It is a picture fuelled by Hollywood films and popular television dramas. Sadly, it often reflects reality. But a small band of professionals in Hong Kong are seeking to forge a different path.

The Hong Kong Collaborative Practice Group helps couples reach a swift, harmonious and long-lasting settlement by offering a radical alternative to court. Hong Kong is the first jurisdiction in Asia to practise collaborative law, embarking on the venture in 2011.

Now, efforts are being made to increase awareness of this new form of dispute resolution within the legal profession and the general public.



Ann Cooley, a financial expert with legal training who has advised some of the world's richest families, says: "What's involved is working with different parties and becoming more empathetic to the emotional stress it puts on individuals going through that process."

"When you are in anger mode, it is very difficult to come up with an agreement on anything. It is important for lawyers to be more sensitive to what the impact will be, especially on the children."

Cooley is one of 70 specially trained professionals taking part in collaborative practice cases in Hong Kong, up from 40 in 2012. They include solicitors, barristers, mental health professionals, child specialists, accountants, mediators and academics.

Rather than fighting an acrimonious court battle, couples and their lawyers work together with such experts to seek the best solution for the family. The process has a higher than 80 per cent success rate, but depends on transparency, trust and good faith among all involved.

The couples must sign an agreement that if, ultimately, they choose to go to court instead, they cannot take the same lawyers with them. This focuses them on reaching an agreement.

“I see so many lawsuits where the fight is about the children. It ends up being the two parents fighting and saying ‘if you don’t give me this, you can’t see Suzy.’ I think we have to hit this early in the process,” says Cooley. In the worst-case scenario, divorce proceedings can lead to the kidnapping of children, alienation, and even suicide, she warns.

This is one of the reasons why alternatives to court actions are growing in Hong Kong and around the world. Avoiding court can be quicker, cheaper, and less stressful. It also keeps cases out of already over-stretched court systems.

Mediation, where a neutral mediator helps couples reach an agreement without lawyers, is recognised and encouraged by the courts.

Collaborative practice, which unlike mediation allows couples to keep their lawyers with them from the start of the process, emerged in the US in the 1990s and has since become firmly established in the UK and Australia. One of the challenges is to persuade lawyers to switch from their traditional adversarial approach in court and instead work openly as part of a team.



“Lawyers are trained to be good gladiators when involved in litigation. They are in court and they are performing

and they have to believe what they are doing so they end up going against each other. There is always a winner and a loser as opposed to coming to the best possible outcome for the family,” says Cooley.

“There are always going to be people who want to go into battle. They are going to spend tens of millions of dollars to go into battle because it makes them feel good. But I think the vast majority of people would rather go and get a settlement and move on.”

Cooley, CEO of Pacific Hawk (HK), which offers wealth management and family mediation services, draws on her own experiences to help couples reach a settlement. She grew up in the US, worked as a banker in New York, and then moved to London before setting up in Hong Kong.

“My parents were divorced, so they had their own games between the two of them. I just wanted them to be happy and be together, but they had their own conversations. I wish there had been mediators who would say let’s talk about this.”

Her parents were involved in litigation. “But I think they had a love-hate relationship at the end of the day. Neither of them ever remarried so I think they secretly did love each other, but hated each other too,” she says.

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Cooley was married in her youth and divorced after six years. “That was a long time ago and it cost me a lot. I was very young. We had some fun for a time. But he wanted me to be a trophy wife I wanted to work and develop my own career. I was not what he thought I was and he was not what I thought he was, so we ended it before it got any further.”

Her personal experience of divorce has helped shape her belief that it should be about moving on, rather than fighting it out.

“All people need permission to move to the next chapter. If they sit around watching *Kramer vs Kramer* or the wonderful *Divorce* TV series you think it’s all about going for the big fight. But it’s really about people coming to a point in their life.”

Hong Kong’s divorce rate is rising. In 2014 there were 20,019 divorces recorded compared to 15,604 in 2004 and 7,735 in 1994.

“We have a huge divorce rate. What are the reasons? Sometimes they married when they were very young. They loved each other at the time and now they have gone in separate directions and they want a new energy and a new life,” says Cooley.

Among the creative ways collaborative practice helps divorcing couples, a neutral financial expert can be brought in to help make the most of the family assets. Cooley says the simplest solution is to split the assets 50/50. But sometimes it is better to hold onto properties rather than sell them so that they gain value and provide rental income.

One case, she recalls, involved a wife who wanted funding so she could go back to college then get a better paying job. “We discussed this with her husband and he said it was a great

idea because she will be empowering herself to earn money. So working as a team can bring many other ways to settle the process.”



She adds that people are attached to different assets. “Sometimes it’s the dog. They will get through everything until it gets to the dog. Then all hell breaks loose.”

Nicholas Hemens, from the law firm Haldanes and chairman of the Hong Kong Collaborative Practice Group, says the practice will catch on in the city, but it will be a slow process because Hong Kong is a conservative society. The group has been dealing with 20 to 30 cases a year, he adds.

There is a need to increase awareness of it, he says. “I recently attended a seminar on mediation. I brought up collaboration. Quite a few people in the room had never heard of it.”

Hemens says the legal profession is curious because few lawyers have experience of collaborative practice. Judges are supportive, but it is also not widely understood in the judiciary.

He says lawyers have to change their mindset if they take on collaborative practice. “It involves sitting down and talking to your opponents. If lawyers become too adversarial we would probably adjourn the meeting. I would say I think this is a bit inappropriate.”

Legal aid is not currently available for collaborative practice, a factor Hemens says needs to be tackled once it becomes more established.

Jain Brown, a solicitor with Hampton, Winter and Glynn, is a trained collaborative practitioner. She says divorce settlements can be achieved quickly through collaboration. One she recently worked on was completed in 10 days, with only two meetings required. “Everyone put their shoulder to the wheel and we got through it.”

For lawyers, the team approach can be initially be daunting, Brown says. “The first one I did was frightening. Twenty years in practice and I try something a lot different. I was very nervous about it. It is a wonderful process. It is just so much more satisfying. When the parties are committed to it, it is just so much better to do it that way.”

Lawyers cannot employ tactics, as they would in court. “There is a commitment to sort this out quickly, efficiently and with as little bruising as possible. If you have someone being tactical, it does not work,” says Brown.

There are still challenges to overcome. The group has translated its materials into Chinese in a bid to reach out to Cantonese speakers.

The ban on couples taking the same lawyers and experts into court with them if collaborative practice fails deters some taking up the option. The relatively small number of family lawyers, mental health professionals and financial neutrals in Hong Kong adds to the problem.

But for couples seeking to find a lasting solution rather than attack each other in court, the team approach can be highly recommended.

Cooley says: “For me, I want to see harmony in the family and to see the kids safe. I want the kids to grow up with two parents. I want the parents to be able to talk to each other down the road because they are both so important to the children.”

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