

All's well that ends well

Collaborative practice is a less stressful way to divorce, says Elaine Yau

As divorcing couples who have gone to court can attest, the fight over custody rights and assets can be more painful than the break-up itself. Children and parents often emerge deeply scarred by the acrimonious exchanges that the process brings.

So when Robyn Ross' marriage to her businessman husband ended in 2002, the Canadian make-up artist cast about for an alternative to avoid the emotional damage that a legal contest would likely bring her daughter, Sienna.

That's when she stumbled on collaborative practice (CP) – a relatively new option that seeks to resolve issues in a divorce amicably.

The approach has worked well for Vancouver-based Ross and her ex-husband. "If we went to court, it would have got ugly and we would never talk to each other again. After CP, we remain good friends," Ross says. "He and his new wife have a child and sometimes I look after our daughter and their child together."

Now, estranged couples in Hong Kong can also turn to collaborative practice to seek a more cordial end to their marriage. Although it originated in the US in the 1990s, CP was only introduced to the city last year. The Hong Kong Collaborative Practice Group gathers 40 solicitors, barristers, financial consultants, psychologists and mediators who are trained in the process.

Family lawyer Winnie Chow Weng-yee is among the people leading the drive for collaborative practice. A partner in the firm of Hampton, Winter and Glynn, Chow believes that CP is a much better option than litigation that typically comes with exorbitant bills and tends to be a drawn-out affair.

"CP shifts the focus from litigation to resolution," she says. "With no hidden agenda and ulterior motive, everybody concentrates on settlement."

The practice began to take off in Britain in 2008 and has also become much more popular in Australia and the US, says family lawyer and group chairman Nicholas Hemens: "Because it's so new in Hong Kong, there is only one ongoing case so far. Only a small percentage of family lawyers are CP-qualified here, but universities are already lecturing on the topic for legal students. We believe it will take off in Hong Kong."

Bringing in independent specialists in fields such as education and family finance helps parties get an impartial picture of their situation. The financial specialist, who must be appointed by both parties, does not represent either husband or wife, says Ann Cooley, a CP-qualified finance

consultant. Instead they examine the family's overall finances for the short, medium and long term to find a proposal for asset division that's fair to both parties.

"When we give the presentation, it's totally independent advice. We do analysis on children's education and the expenses they need down the road. We make sure if something happens to any party, there's insurance."

Melanie Bryan, a CP-qualified psychologist, says their neutrality helps couples reach an agreement that is best for the children.

"We will see how old the children are, what the issues and sticking points are. We will look at their relationship with parents, how they are functioning and how they are doing at school."

In Ross' situation, differences with her husband over Sienna's upbringing were solved by a jointly appointed child therapist.

"Sienna was four years old then. I didn't want to send her to day care, as I believe small children should be raised by close family members instead of being put in a factory where nobody cares for them. My former husband disagreed and thought I should be out working."

The therapist spent time with their daughter to assess whether day care would be good for her.



Helen Ladret and Winnie Chow.
Photo: Edmond So



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WINNIE CHOW, LAWYER

Eventually, they reached a compromise allowing Ross to raise Sienna at home but with the proviso that she should also care for other children to bring in some income.

"There's so much anger at the beginning that there's no way we can sit down to have a rational conversation. In court, lawyers will try to make the other party look bad and the judge won't tell you are not being reasonable," Ross says.

That all the parties can meet to thrash out an agreement also helps minimise misunderstandings, Chow says. "It can be a five- or six-way meeting where the finance specialist, in the presence of divorcees and their lawyers, gives immediate financial advice with everybody listening."

"If you have questions, you can ask immediately. But in litigation, we don't go with the client to see a mental health professional or financial adviser. What the client takes from the financial adviser might be lost in translation by the time they come and explain it to us. But CP makes all of us sit together in the same place at the same time."

This approach affords privacy (a particular consideration for high-profile couples) and can save a lot of time and money, Chow says. "CP allows couples to have control over

the process. If you go to court, everybody is subject to the court diary. In CP, they can set up a series of meetings within a week, fortnight or month, according to the schedules of parties involved."

That's a big plus compared to litigation, where even some straightforward cases can take nine to 12 months. Most cases go for two years, she says, recalling a colleague's case that is still in dispute after 14 years.

Ross settled her divorce within eight months through collaborative practice. Her bill came to C\$15,000 (HK\$115,000) while her ex-husband's came to C\$20,000.

With divorce on the rise in Hong Kong, CP seems a promising idea. There were 18,167 divorce cases registered in 2010, up 35 per cent from 2001, and more are being contested. District courts handled 17,359 new matrimonial cases in 2010, compared with 13,737 in 2001.

For CP to work, both parties must appoint a CP-qualified lawyer and commit to an agreement to resolve disputes through collaborative practice instead of litigation.

"They need to sign the participation agreement, which

binds the lawyers not to take the matter to court," Chow says. "The parties can back out and litigate if they think what they are doing is not working, but they need to employ a new set of professionals. That makes them think twice, as they wouldn't want to start all over again."

While mediation is now widely practised, solicitor Helen Ladret says CP takes the concept of collective work further. "Even with mediation running in parallel with litigation, you still need to guard your position," she says. "If you get an e-mail with accusations, you need to reply at some stage. The judge might consider it when making a decision. But CP, which does not allow parallel court action, is truly a ceasefire," says Ladret.

For all its benefits, Chow concedes that collaborative practice is not for everyone.

"Those fresh from a breakdown are often angry, vindictive and not ready to move on. Their whole viewpoint is, how he did this to me and I am out to hurt him. If they are of this mindset, it's very hard to go down the CP route."

"But for those who accept the relationship is over and are willing to do something to get out of it with dignity intact, it can certainly be a ray of light," says Chow. elaine.yau@scmp.com