



My Dream Divorce

A growing number of couples - and lawyers - are deciding to do divorce differently



Julie Beun-Chown
The Ottawa Citizen

For years before his 1987 divorce, Mike Brown was a drinker -- a bad drinker who could flip from popular jokester to angry bully in less time than it takes to down a beer.

Even so, his wife Megan loved him, his big heart, his friendship and his wacky sense of humour. But after a few years, even those lovable traits weren't enough. Megan, who had a daughter with Mike and another from her first marriage, asked for a divorce.

"When you're trying to have a career, raise your children and deal with all that," the 53-year-old Halifax woman recalls, "you get to a point where you think, 'I can't do this anymore.'"

By anyone's reckoning, their split should have ended in a painful, brawling divorce.

Incredibly -- no, miraculously -- it didn't. Each of them had experienced painful divorces before their own, so Megan and Mike were determined that this relationship would not ruin their family. The couple threw societal expectations out the window and did their divorce differently: They lived together as roommates in a three-bedroom townhouse in Calgary, so together they

could raise their daughter Bethan. What's more, the parenting partners -- for lack of a better term -- weathered stranger waters still when Megan fell in love with and married Mike's brother Bill 12 years later.

Throughout it all, the former couple maintained just one focus.

"Mike and I were totally committed to our child. It was our number one priority," says Megan. "We'd both been through bad divorces. From those experiences, we learned what we didn't want. And we didn't want our daughter to suffer."

Noble sentiments indeed, but the Megan and Mike Brown story is far from isolated. According to *Reconcilable Differences* (Second Story Press), a new book by Cate Cochran, a producer on CBC Radio's Sunday Edition, more and more of the 38 per cent of Canadians who go their separate ways are fighting the urge to fight it out to the bitter end. Instead they're choosing to craft their own -- and often unconventional -- arrangements. Other times they work through Collaborative Family Law, a rapidly expanding program in family law practice introduced to Ottawa in 2002 that neither

bleeds couples financially nor leaves children caught like deer in traffic.

"The marriage, the romance may end, but the family doesn't," says the 52-year-old Cochran, a veteran of her own remarkable divorced-but-cohabiting arrangement. "It's incumbent on us to build a strong family even if it's shaped differently."

How different is different? Plenty. One couple Cochran interviewed decided to stay in the family home; the husband just shifted to the attached granny flat. He supported them financially and, after the children moved out, the pair sold the house and went their separate ways.

An Ottawa man who came out as gay to his wife after nearly a decade of marriage simply moved into a downstairs bedroom. Although the wife was initially devastated, they now celebrate the anniversary of their divorce every year.

Shortly after Cochran's marriage ended, she and her ex bought a four-plex in Toronto, rented out two units and moved into the other two. Their children ranged freely from one unit to the other while Cochran and her ex spoke daily, often sitting on the stairs between their apartments to discuss school projects, parenting and meal schedules.

Given the emotional maelstrom that accompanies failed relationships -- hurt, guilt, grief, vindictiveness, remorse and anger -- divorces that move beyond amicable into happily-ever-after seem impossibly rare. Not so, says Cochran. With a shared agenda of maintaining financial stability and emotional integrity for the children, the "divorce dissenters" are stepping up to the challenge. "It's the same rules as any good marriage. You have

to be respectful of each other," says Cochran. "You have to make compromises."

Such notions are also at the heart of Collaborative Family Law. First developed by a group of lawyers in Minnesota, CFL lawyers are specially trained to tackle separation and divorce from a compassionate and co-operative angle.

They meet with separated spouses to define and negotiate issues in a respectful, controlled environment.

"Every CFL case starts with an agreement," says Anne Moxley, a CFL lawyer in rural Ottawa who limited her practice to out-of-court, negotiated settlements more than a decade ago after witnessing the devastation caused by standard divorce procedures. "It sets out the rules of the game, and that means civility as well as procedure. The lawyers agree they won't take it to court later, disclosure of assets doesn't become a digging expedition. Basically, we're trying to keep things on the rails, moving forward and building up rather than tearing down."

Along with the agreement, lawyers can bring in social workers, psychologists and financial planners to help coach the divorcing couple on everything from their RRSPs to the children's psychological well-being.

"When you split up, it can be hard to see where things are going," says Moxley. "If you have a financial specialist come in with a spreadsheet and explain where you are going to be in 20 years, it takes the fear out of it. It's not a dissolution of a family, it's a restructuring of it."

So far, it's working. According to Heidi Ruppert, a CFL specialist at the Ottawa law firm MDR Associates, the focus on negotiation

and communication has turned potentially acrimonious divorces into speaking-terms arrangements.

"I had one client support the spouse through rehab, not pulling any moves, so they could work toward 50-50 parenting," she says. "Some clients live in the same neighbourhood so the kids are close. Many couples initially have a bird's nest arrangement (in which parents, not children, move in and out during access weeks). The key ingredient? People have to really get a grip on their pain. They have to have the patience, too, to understand that the party being left needs some time to catch up emotionally."

For Megan, Mike and others forging their own path, lawyers are not always necessary. Although the couple briefly consulted a paralegal, "we did everything ourselves," she recalls. "It was a dream divorce, if such a thing is possible. We put the issues we had between us to one side."

One motivation was avoiding the kind of messy split Mike experienced with his first wife; the Browns say they spent \$25,000 attempting to gain access to Mike's young son. "But his divorce is the norm," Megan says. "So I'm a little jaded with the whole court system."

The one thing she isn't cynical about is her own split. After the couple decided to end their relationship, Mike left Calgary for Nova Scotia to help him recover emotionally from the split. But when Megan found a good job 18 months later that involved travel, she made him an offer

"I knew how much he missed our daughter," Megan recalls. "So I said, 'Have you thought about returning?' He moved back within three weeks."

Although his presence in Megan's spare room

was theoretically temporary, the former couple quickly fell into a routine that even involved Mike moving with the family when Megan took a job in Saskatoon. Strangely enough, although his drinking and depression were still an issue, Mike respected the new dynamic and would stay at a friend's house if he had been drinking or was depressed.

"Your expectations change along with the circumstances of your relationship," Megan says. "I had a more realistic view of what he was capable of and he felt the same way about me. I had no expectation that he would look after my needs; that wasn't his job anymore. But I did have expectations of him as a roommate that he met and exceeded."

Years later, when Mike's brother Bill showed up one night after driving straight from Halifax to escape his own difficult divorce, the family expanded. Megan would stay up late listening to Bill's problems and discussing life. Eventually, they fell in love, married in 1999 and now live in Halifax.

"This whole thing has made me a better person," Megan says of her friendship with Mike, who still lives out West. "I'm really proud of the relationship I have with him, and how we took something so cruel and did things differently."

But is society ready for dream divorces?

It depends on whom you ask.

"Definitely, there is exponential expansion in this area," says Moxley. "Clients are looking for it. People are looking for a better way to move on." On the other hand, divorcing co-operatively puzzled many of Cochran's friends.

“People think you’re either foolish or naïve,” she says. “There were skeptics who assumed that one of us was being fooled. Or they’d be perplexed. We didn’t have the answers, there was no model, so we didn’t know what we were facing. It was literally feeling our way along the walls of a dark room.”

Cochran says the concept of a happy divorce troubled some, but many more were confused by how she and her ex developed a more honest, communicative and co-operative relationship than when they were together.

“People have asked us why we didn’t just stay married, even though it wasn’t working on other levels,” Cochran admits. “It was unorthodox, but it made sense to us.”

Whether or not such queries are the result of our Noah’s Ark society that only understands relationships in pairs, Cochran says the key was to trust her instincts. “You conferred and trusted each other, and you adapted as you went along. We had friends who had an incredible food fight of a divorce and we knew that’s not what we wanted for ourselves.”

Recently, Cochran’s 19-year-old son left home for the first time. “I asked him about his childhood, five years of which was with this arrangement. He just said to me, ‘Mom, it was a really happy childhood.’ If we can give our children just that,” she says, “then it’s worth every moment of struggle.”

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HOW TO HAVE A DREAM DIVORCE

1. “Sit at the kitchen table and talk about what matters most, which for most people is the happiness and stability of the new family structure,” says Cate Cochran, author of the new book *Reconcilable Differences*. “Talk about what you can and can’t do. Craft an arrangement that you can live with and never mind what the rest of the world thinks about it.”

2. Get good advice on financial issues, which can be very complicated depending on your circumstances.

3. Show some respect. “You can’t belittle or degrade the other person,” Cochran says. “Don’t fight in front of the kids or drag them into disagreements. We all slip and let our anger take hold, but you have to learn to apologize and start over.”

4. Create an equitable schedule and division of financial responsibilities. “You have to figure out who’s going to pay for things like skating lessons. It’s pretty basic stuff. Draw up a list and keep talking to each other. Negotiate. The same goes for a work schedule and time off. We both had long-distance relationships, so we needed weekends off and we had to work around that.”

Mutual respect the goal of collaborative divorce Alternative approach to litigated breakups quietly growing in B.C.

Tom Sandborn / Contributing writer
The Vancouver Courier

“One of the things I learned going through my divorce that way was that I needed to love my child more than I hated my husband,” said Robyn Ross with a wry laugh.

The Vancouver movie industry worker went through her divorce a decade ago, but she was among the first in the province to try an exciting new approach, dubbed collaborative divorce, that avoids litigation, resolves conflicts and enhances mutual respect and regard between the divorcing spouses.

Like a small but growing number of B.C. couples, Ross and her ex-husband turned to this new cooperative approach as an alternative to the emotional and financial damage often involved in courtroom litigated battles.

Ross credits the collaborative process with allowing her and her ex-husband to get past bitter feelings to become real friends as they cooperate in raising their daughter.

“Our daughter is doing amazingly well,” Ross said. “And at the end of the day, my ex and I both felt the process was fair.”

Despite what started as a deeply unhappy separation, Ross told the Courier, she and her ex-husband are now good friends, and when he remarried a few years later, she was

comfortable attending the wedding and has developed a friendship with his new partner.

“In collaborative divorce,” Ross said, “everyone is held accountable for the best interests of the child. I wouldn’t want anyone to think it was easy. It wasn’t. But collaborative divorce gives you the tools you need. I couldn’t have had all this joy and family without the collaborative process.”

Lawyer sought better way

With 70,000 divorces occurring in Canada each year and a divorce every 13 seconds in the U.S., there is a lot of divorce-related misery in North America. The received wisdom claim that half the marriages contracted here will end in divorce, while memorable and widely believed, is less than entirely accurate.

For starters, the 50 per cent failure rate is an American figure and it is even higher in some European countries. For Canada, the most recently reported (2008) chances of a marriage ending in divorce are closer to 40 per cent. And in both countries, the aggregate numbers for divorce include not only first marriages, which end in divorce less often than the average, but also second and third marriages, which tend to break down much more frequently and drive up the average.

But even if you scale down the statistics for

accuracy, the number of people who suffer through harrowing marriage breakdowns is huge. Litigated, antagonistic courtroom divorce can increase the pain for all concerned.

A quarter century ago, a family law practitioner in the American Midwest, Stu Webb, decided there had to be a better way to help his clients navigate divorce. He created a new approach called “collaborative practice,” designed to keep families out of the adversarial atmosphere of courtroom litigation and into a focus on cooperating for the sake of their children’s future.

A soft-spoken student of Tibetan Buddhism who had been practicing law since 1964, Webb said he became “burnt out” under the stress of adversarial litigation and invented this alternative approach to divorce in 1990. Since then, the number of practitioners around the world has burgeoned and there are now an estimated 40,000 lawyers trained in and employing the methodology, Webb told the *Courier* by phone recently from his retirement home in Minneapolis.

Webb calls the prior commitment made by clients and lawyers who enter into a collaborative divorce process not to take the divorce into courtroom litigation “Rule One.” He describes his first realization in the 1990s that such a contract would be fundamental to success in non-adversarial divorce his “breakthrough, aha moment.”

Designed for families

Readers curious about the contracts that formalize these commitments can find the documents that the divorcing couple and all the professionals on their collaborative team sign described on the website of Collaborative Divorce Vancouver at www.collaborativedivorcebc.com.

According to the website, when you sign a Participation Agreement, you are committing to:

- Stay out of court
- Communicate openly and with respect

- Disclose all relevant information promptly
- Keep negotiations confidential
- Hire new lawyers and start over if you do decide to go to court
- Not use any disclosed information against each other if you go to court.

Although most contested B.C. divorces are still done in the classic, bruising courtroom litigation style, a small but growing group of local practitioners have been building up a collaborative practice community in the province since Webb and two other pioneers in the approach, Peggy Thompson and Pauline Tesler, conducted a training session here in 1999.

Nancy Cameron, the Vancouver lawyer who invited the trainers to Canada, said nearly 500 B.C. lawyers are trained in the approach.

CBC TV’s Doc Zone aired a powerful film called *How to Divorce and Not Wreck the Kids* in 2009, including a portrait of Sally and Lionel, a B.C. couple using the collaborative approach, but the option remains relatively little-known here.

Pauline Tesler, the California lawyer who helped lead the first B.C. training sessions in collaborative practice, was scathing in her assessment of the litigation approach to divorce in an email exchange with the *Courier*.

“In family matters,” Tesler wrote, “which are inherently complex and deal with a rupture in the most essential human relationships, litigation — which builds in adversarial aggression, oversimplification, and polarization, as well as a focus on blame, is the wrong model. Nobody designing a system for resolving divorce related legal issues arising during normal family restructuring would design the one we’ve got.”

Litigation, Tesler wrote, is a zero sum process that is more costly than divorcing families can afford financially and emotionally.

“It damages those who participate in it by causing both lawyers and clients to act from the most primitive reptilian parts of their brains, remaining in high levels of biological stress that are inconsistent with creative problem solving,” she said.

She added that the process itself damages clients, depressing immune functioning and cognitive processing capacities and damping energy available for work, volunteering in the community, and parenting children.

“One eminent California family law judge has said family court is where they shoot the survivors,” she added.

“Collaborative divorce builds in value-added interdisciplinary services that meet the full spectrum of needs that every family has in divorce: emotional, legal, financial — with a constructive, respectful, creative and private focus on shared values and the best outcomes for every member of the family system,” she concluded.

Teams support spouses

Typically, a collaborative divorce involves the spouses, a trained collaborative lawyer for each and two mental health professionals who function as a “collaborative divorce coaches,” with one for each partner. It can also involve a neutral child specialist and a neutral financial planning specialist to fill out the team working to make the divorce as cooperative and child-friendly as possible.

While the number of professionals involved can entail significant costs for clients, with various B.C. experts quoting typical expenses for a collaborative divorce between \$10,000 and \$25,000, the costs of litigated courtroom divorce can be much higher both in financial and emotional terms.

For example, Sally and Lionel, the couple profiled in the CBC documentary, required only six sessions to come to an agreement that both accepted, even in the face of complicated disagreements over division of property, a situation that could, conceivably, have been much more embittering, expensive and

time consuming in adversarial litigation.

“Collaborative divorce was enlightening for me,” said Jake Fraser, a Pender Harbour resident who used the process. “It was a reality check. I found out some things about myself that embarrassed me, but things would have been far worse in an adversarial process. I learned a lot about my need to control everything and always be right.”

Fraser called lawyer Cameron, who acted for him in the divorce, and the collaborative process itself “sources of good cheer in a world of pain.”

That’s the kind of feedback that Danny Zack loves to hear. Zack is a burly, jovial Metro Vancouver lawyer who also practises in Nelson. Zack, like Cameron, has decided to abandon adversarial litigation altogether and handle all his cases without recourse to courtroom battles. (Cameron and Zack are the lawyers shown on screen in the 2009 CBC documentary.)

In a sun-drenched office near Vancouver International Airport, cheerily cluttered with memorabilia from his career in collaborative law and his passionate other life as a highly competitive and successful amateur golfer, Zack said he hasn’t been in a courtroom contest in over a decade and he doesn’t miss the stress at all.

In fact, he credits his shift to collaborative practice with improving his health and making his life happier.

“In-court competition was tough,” Zack said. “Now, I don’t have to win anymore. I don’t need to go in with a suit of armour. In collaborative meetings I am not outcome-oriented in the same way I was as a litigator. Our goal is to positively restructure families, not tear them apart.”

He never believed children and families should be in court rooms.

“I believed that was destructive,” he said. “The litigious approach has all of that negativity of looking backward and alleging bad conduct.

Collaborative practice doesn't mean you ignore what has happened, but you don't punish people for it. You try to help them look forward and build a new future that is positive. I quickly decided I wasn't going to keep going into the court system."

Cameron agrees. She said the skills she was developing in courtroom litigation "were not the skills I wanted to embrace in my personal life at all."

She didn't want, she said, to "increase the size of the parts of me that were fostered by the win-lose, blame-and-shame nature of the adversarial court system."

Catherine Brink, a young Vancouver lawyer, went to law school explicitly in order to engage in collaborative practice.

Called to the bar in 2008, she conducts her practice entirely outside of the courtroom doing collaborative divorce, negotiation, mediation, estate planning and pre-nuptial agreements.

"I was seeking a career where I could help people," she said. "The collaborative model is so empowering and respectful. It brings safety into the room for our clients, and the teams are so mutually supportive."

Empathy for all

The supportive team that Brink mentions often includes collaborative divorce coaches. Two experienced coaches working in B.C. are Deborah Brakeley and John Boland, mental health professionals who frequently work together as part of the team that supports a couple going through the collaborative process.

"While we are in alliance with our own client, we are not aligned against the other spouse," Brakeley said. "We show empathy to both spouses, knowing that divorce means experiencing multiple losses for everyone. We want to address the needs, desires, and views of both parents."

In particular, Boland said coaches focus on parenting plans for the divorcing couple.

"Our goal is to help them redefine the relationship from a marriage to a co-parenting partnership. We ask our clients what they want their kids to say in 20 years about the separation."

"We want the kids to love both parents," Brakeley added.

"Our goal is to teach compassion and empathy, and we focus on emotional self regulation, practical ways like breathing exercises, yoga and mindfulness to manage the hurt and anger that can go with a divorce."

At the end of the CBC documentary, Sally, a woman the viewer has seen angry and tearful as she engaged in a difficult and sometimes bitter and painful (but in the end, visibly healing) process during her collaborative divorce meetings, sums it up.

"I am proud of Lionel and me. I think we have a great agreement here for our kids. It makes me feel happy for them."

Robyn Ross tells the same story. Her collaborative divorce, she told the *Courier*, left her "at peace."

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