

Where family medicine and law connect

Being familiar with the main dispute resolution options available to people who are in the process of separating and divorcing in British Columbia will help you guide your patients through these difficult times more knowledgeably.

**Deborah Lynn Zutter, LLB,
LLM, Lynn Beck, MD, FCFP**

Family physicians are often caught in the middle of families embroiled in divorce proceedings. It can be difficult to negotiate between warring spouses, especially if both are your patients. The ultimate goal is to have a balanced outcome meeting the needs of all the parties involved, particularly the children. Family physicians are very familiar with the emotions and physical symptoms that reflect the trauma of divorce, but what they may not be as familiar with is the labyrinth of legal procedures available to divorcing couples.

The options open to families in the midst of a divorce include collaborative law, mediation, negotiation, or litigation. If one process is not moving toward settlement, another can be tried. The **Table** is a quick reference for patients as they commence seeking information and services.

Collaborative law

Collaborative law is a voluntary process where the disputants and their lawyers agree to work together to reach outcomes that meet the interests of the disputants. They enter into a participation agreement that stipulates that they will not go to court while they are in the collaborative law process.

There are other professionals who are part of the collaborative law team. They are included as needed on a case-by-case basis. Collaborative coaches

are mental health professionals who have expertise in the family dynamics of separation and divorce. Each disputant works with an individual coach to address emotional issues. Child specialists are mental health professionals with training in child development. They are neutral people who work with both parents to meet their children's needs. Financial specialists are finan-

Collaborative law is a voluntary process where the disputants and their lawyers agree to work together to reach outcomes that meet the interests of the disputants.

cial planners with specialized training in issues that arise on separation and divorce. They are also neutral. Their role is to provide information about the financial consequences and the long-term implications of decisions.¹

The contractual commitment not to litigate is controversial. Disputants who make this commitment are faced with hiring new lawyers should they fail to resolve their family law matter and decide to litigate. This has finan-

cial implications for clients and lawyers. It acts as a strong hook to keep disputants committed to reaching resolutions through the inevitable moments of frustration, fear, and impasse that the collaborative professionals are trained to work through.

The involvement of lawyers throughout the process tends to address power imbalances. For this reason, even couples in mild to moderately abusive relationships are candidates for collaborative law. Disputants also require financial resources. At the same time, legal costs can be reduced when coaches, child specialists, and financial specialists are used effectively. Couples whose goal is to cooperatively parent their children after separation should consider collaborative law.

Mediation

Mediation is a voluntary process where the disputants work with a mediator in a confidential setting to reach a settlement that meets their interests. The mediator does not make decisions; at all times, the disputants reach resolution consensually. Therefore, detailed and creative solutions are common outcomes.

There are two family mediation

Ms Zutter is a Vancouver-based lawyer and mediator who specializes in collaborative family law and mediation. Dr Beck is a clinical assistant professor in the Department of Family Practice at the University of British Columbia.

models in British Columbia: mediator and clients only (MO), and mediator and clients with both lawyers (ML).

In the MO model, clients meet with the mediator several times for 2- to 3-hour-long meetings over a series of weeks or months. Lawyers are involved peripherally to give advice between meetings or to review the draft separation agreement.

In the ML model, clients attend mediation with their lawyers. These meetings tend to last all day. When the case is complex, or there are entrenched emotions, several days of mediation may be required.

Most family mediators hold sepa-

rate meetings, known as preliminary conferences, with each client prior to the first joint mediation meeting. Preliminary conferences allow mediators to:

- Address procedural anxieties that disputants may have.
- Describe the mediation process.
- Suggest steps that disputants can take to prepare for mediation.
- Consider safety issues.

There are significant differences among mediators concerning training, regulation, and the extent of competence. Only lawyer-mediators are subject to mandatory regulatory provisions.² Lawyer-mediators may draft the

separation agreement or prepare a joint claim for divorce. Family justice counselors provide free parenting plan and child support mediation services. Some mediators, including family justice counselors and lawyer-mediators, have obtained certification with Family Mediation Canada.³

Mediation works best when the disputants are committed to settling their family law matter outside the court. Ideally, there is no spousal abuse. It is important that each mediation participant feels safe. The ML model can be used to address concerns about power imbalance. Mediation tends to

Continued on page 500

Table. Separation and divorce resources, British Columbia.

Resource type	Service name	Cost	Location	Phone	Web site	E-mail
Mediation, all issues	BC Mediator Roster Society	Free referral to private mediator; individual rates	Province wide	1 888 713-0433	www.mediator-roster.bc.ca	mediators@mediator-roster.bc.ca
Mediation, all issues	Family Mediation Practicum Project	Free mediation	New Westminster	604 516-0788	www.ag.gov.bc.ca/dro/family-mediation/index.htm	fmpp@telus.net
Mediation, parenting and child support	Family justice counselors	Free mediation for parents with modest means	Province wide	1 800 663-7867 Van: 604 660-2421 Victoria: 250 387-6121	www.ag.gov.bc.ca/family-justice/help/counsellors/index.htm	
Legal services	Collaborative law	Individual rates	Lower Mainland		www.nocourt.net/	
Legal services	Collaborative law	Individual rates	Lower Mainland	604 878-1498	www.collaborativedivorcebc.org/	info@collaborativedivorcebc.org
Legal services	Collaborative law	Individual rates	Okanagan		www.collaborativefamilylaw.ca/	info@collaborativefamilylaw.ca
Legal services	Collaborative law	Individual rates	Victoria	250 704-2600	www.collaborativefamilylawgroup.com/	info@collaborativefamilylawgroup.com
Legal services	Legal Services Society	Free in limited conditions	Province wide	1 866 577-2525 Lower Mainland: 604 408-2172	www.lss.bc.ca/default/Default.asp	
Legal services	Duty Counsel, Provincial Court	Free	Province wide		www.lss.bc.ca/assets/legal_aid/PC-FDCinfo-list.pdf	
Legal services	Duty Counsel, Supreme Court	Free	Province wide		www.lss.bc.ca/assets/legal_aid/SC-FDCinfo-list.pdf	
Legal services	Lawyer Referral	\$25 for 30 minutes	Province wide	1 800 663-1919	www.cba.org/BC/Initiatives/main/lawyer_Referral.aspx	lawyerreferral@bccba.org
Information, legal	Law Line	Free	Province wide	1 866 577-2525 Lower Mainland: 604 408-2172		
Information, parenting	Parenting After Separation	Free; mandatory for some courts	Province wide	1 800 663-7867 Van: 604 660-2421 Victoria: 250 387-6121	www.ag.gov.bc.ca/family-justice/resources/brochures_booklets/pas/Parenting	

Reproduced with permission from debzutter.com. For information only; to be used on an "as is" basis, and liability arising from its use is expressly disclaimed.

premise

Continued from page 499

be the least expensive dispute resolution process available to spouses who are separating. Like collaborative law, mediation is an alternative to litigation. The nature of the litigation process—persuading a judge that you are right and the other person is wrong—tends to undermine relationships. For this reason, families benefit when separating spouses use mediation or collaborative law. For an extensive discussion about family law in British Columbia and alternatives to court, go to www.bcfamilylawresource.com.

Negotiation

Collaborative law and mediation are formalized processes of negotiation. Typically, there is some informal negotiation that occurs between spouses. Most litigation lawyers try to reach a settlement by negotiating. Four-way meetings between both lawyers and both spouses are one of the many ways to negotiate. Lawyers may also negotiate without clients present, through letters, e-mails, and telephone contacts. When lawyers take responsibil-

ity for the process of negotiation there is a risk that clients may become detached from their family law matter and the actual details of settlement. Negotiation can be very effective for clients who are depressed or otherwise unable to negotiate directly with the other disputant.

Litigation

Fewer than 5% of family law actions that are commenced go to trial. Most are settled at some point during the litigation process. Litigation is the only alternative when couples are unable to agree. It may also be called for when there is current physical or sexual abuse or when a spouse is hiding assets or not fully disclosing financial information. Negotiation is always available during the litigation process. Intense anger and hurt focused on the other spouse is one of the reasons that people litigate. These powerful emotions often decrease with the passage of time. Mediation can be used effectively at this point.

The Supreme Court is supportive of couples who try to reach settlement without trial. In fact, all British Co-


lumbia couples involved in family litigation are now required to attend a judicial case conference⁴ during which judges explore the possibility of a voluntary settlement with the disputants and their lawyers. Frequently, couples are able to reach a full or partial settlement at this early stage.

Conclusion

The suitability of litigation, negotiation, mediation, or collaborative law for a particular couple in the process of separation or divorce changes over time. If one process is not moving toward settlement, another should be tried.

References


1. International Academy of Collaborative Professionals. www.collaborativepractice.com (accessed 23 October 2006).
2. Law Society of British Columbia. Professional Conduct Handbook, Appendix 2, Family Law Mediation.
3. Family Mediation Canada Certification Program. www.fmc.ca/index.php?page=12, (accessed 24 October 2006).
4. Court Rules Act, Supreme Court Rules, BC Reg 221/90, as amended, Rule 60E(1), Family Law Proceeding—Judicial Case Conferences.



BCMJ
The British Columbia Medical Journal

BCMJA Website
CURRENT ISSUE
ARTICLE
JOURNAL
RESOURCES
NEWSLETTER


October 2007



New BCMJ web site—www.bcmj.org

On November 1st the *BC Medical Journal* launched its new web site. It contains all the content of the previous site, but in a simple, sleek, easy-to-use package. Gone are the finicky drop-down menus, replaced by a clear left-hand navigation. The site has been rebuilt from the ground up as a journal site rather than as an add-on to the BCMA site. Some other new features you'll appreciate:

- Well-organized, graphic archive (content from 2000 onward)
- Excellent search tool
- CME listing highlighted and updated regularly
- "Most viewed articles" featured
- E-mail alerts
- "Cite this article" button
- "Respond to this article" button
- Enhanced information throughout



BCMJ
BC Medical Journal