

Legal Matters

Preserving the peace



Family lawyer **Daniel Myers** of Farrar Gesini Dunn explains why collaborative law can help the process of separation remain dignified and easier on all parties involved.



WHEN I tell people that I'm a family lawyer, the first thing I'm often asked is: "Oh I bet you must hear some interesting stories – does it get really nasty?"

Well, I do hear lots of interesting stories, both good and bad, and trying to untangle the rich, complex and dynamic lives that families live is part of what makes my job fascinating.

Sadly I do come across cases that fit the 'nasty' stereotype. And unfortunately they often involve long, expensive and stressful court battles, hostile or non-existent communication between the parties (often with restraining orders in place), and where either or both parents place their own needs above their children's needs – which inevitably harms their development.

From a personal perspective, those cases are difficult and challenging, and there are usually no easy answers. That said, when running those matters I try to help clients achieve their long-term goals by working out an overall

strategic plan with them rather than adding fuel to the fire.

However, in most cases, the unpleasant and hostile behaviour is usually just a symptom of a lack of trust arising from miscommunication. Inevitably, there are an array of other personal emotions such as fear of the future and not wanting to 'lose face' in a dispute that lead people to do and say things they ordinarily wouldn't.

To offer useful and practical advice to my clients, I need to understand these dynamics, which is why I spend time discussing things that aren't strictly speaking 'legal issues' when I meet a client for the first time. I want to know what's important to a client, what their goals are, how they're coping with the separation, and how they communicate with their ex-spouses.

Despite the challenges arising from any long-term break-up, there is a way to tackle all the legal, emotional and practical issues in a way where the parties and their lawyers commit to reaching agreement by negotiation

around a table, and not before a judge. That process is called collaborative law and it is one that I'm a big fan of.

Given the high stakes involved in a separation, it's important to obtain advice at any early stage from a family lawyer who will promote less litigious outcomes, and help clients set the right tone at the outset before passing the point of no return.

In a collaboration, the focus is on a settlement that adopts an interest-based rather than wholly rights-based approach. The agenda and rules for collaboration are agreed between

each of the participants and the outcomes that are achievable by collaboration are far more far-reaching and flexible than court outcomes. The process itself is usually more dignified, often cheaper, and can preserve relationships rather than destroy them.

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A considered decision about the process at the beginning can avoid things getting nasty, and allow the real underlying issues to be addressed.

For further advice regarding family law matters, contact Daniel Myers of Farrar Gesini Dunn at (03) 8376 7000; d.myers@fgd.com.au. Farrar Gesini Dunn is located at Level 5, 466-468 Little Lonsdale Street, Melbourne.



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