

TAB 5

How Mental Health Professionals Can Help in The Collaborative Team Process

**Helen Scott Goudge, M.S.W.
Divorce Coach
Psychotherapist**

Collaborative Family Law Practice



The Law Society of
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POSSIBLE ROLES

1. "Parenting Coordinator"

- (a) May assist in developing a Parenting Plan
- (b) May meet with children as a consultation to the parents.
- (c) May discuss with parents how to tell children about the separation.
- (d) May help parents in implementing/monitoring the parenting plan.

2. "Process Coach" (Divorce Coach)

May assist one or both parties address emotional issues that are interfering with problem solving in the collaborative process.

3. "Facilitator"

A neutral professional who may work with the lawyers and/four way meetings to help participants keep focus on the issues to be addressed in the collaborative process.

How Mental Health Professionals can help in the Collaborative
Team Process

this is a transcript of a meeting
between client & lawyer the morning after their first
collaborative meeting

Helen Scott Goudge
Nov. 5/04

Client: Hi (name of lawyer) - I'm so glad you could see me. I've been up all night worrying about some things since that first collaborative meeting yesterday.

Lawyer: Ok, I'm glad you called then. Tell me more.

Client: well...I have so many concerns that I'm not sure where to start

Lawyer: mmmmmm (sympathetic)

Client: I guess, most importantly, I'm sick with worry about how the kids are going to take this separation. Are we just going to fly ahead in these meetings without really knowing whether we're setting up arrangements right for them? I mean Joe wants a week-about arrangement for the kids but our little guy is just 5 years old. And how are we going to tell the kids - I start to cry myself every time I think of us separating - never mind how I'll help them with this.

- and - on top of all this, I have to tell you that I was a little uneasy yesterday at our meeting with how mad Joe was getting. I know both of you lawyers have said that this process isn't supposed to be about who's to blame for this separation ... that it's supposed to be all about finding solutions that can work for the kids and for both of us --- but you know -- Joe just can't seem to stop blaming me for that ah... 'relationship' I had. I mean I feel guilty enough about it without him rubbing it in..... Then I know that I lost it too and started in about how amazing it was that I only had had one affair given that Joe was a complete workaholic and I never saw the guy. Anyway, the whole thing felt pretty unpleasant yesterday. Can we do this collaborative process without Joe there?

Lawyer: Wow - there's a lot of concerns and they are all pretty important ones. Sounds like you're really worried.

Why don't we talk about your concerns about the children first and then look at what would help our meetings stay on course a little better than yesterday's.

Client : OK

Lawyer: For the children's issues, sometimes we have what we call a 'Parenting Coordinator' join our Collaborative team. This is a professional - probably with a social work or psychology background - who has expertise around children's needs and separations. He or she can meet with you and Joe about what arrangements would work best for a 5-year-old and for the other children given their ages and your own particular situation. He or she could then help you work out a Parenting Plan that would address arrangements for the children and how the two of you as parents can work out parenting decisions that need to be made in future.

That coordinator could also see the children if you felt that this would give you both a better picture of their needs. and, sometimes, after you have the plan in place, you both might still want to keep the coordinator available to help you when circumstances change or if any of the children are having problems.

By the way, this professional could also help you sort out how to tell the children about the separation.

Client: sounds really good - but how much would this cost?

Lawyer: Well he or she will have professional fees but usually these fees are less than lawyers' fees (especially when there are two of us) and of course you're with someone who has higher expertise around parenting issues. You'd probably feel good knowing that the agreement you come up with for the children would be made with all the experience and knowledge that is now available.

Client: Well I think you're right that I'd feel much better if someone who specialized with kids' needs was involved. I just don't feel that Joe understands about how little kids need their mothers - he only talks about

how they need their fathers! Maybe we'd both listen if it was neutral person helping us see what's best for my kids - I mean 'our' kids.

But what if - even with this Parenting Coordinator - we still can't agree about what would be best for the children.

Lawyer: When that happens, we usually find that if we have the Parenting Coordinator join us in a Collaborative meeting and we all talk, we're able to clarify the impasse and get it sorted out.

...which I guess brings us to the concerns about the meeting yesterday. Can you tell me some more about your thoughts.

Client: I know that, on top of worrying about the kids, I really got upset when Joe blew up about my relationship. Maybe he'll never get over it. I could see that his lawyer was trying to tell him nicely to 'shut up' but even his lawyer seemed to be having a tough time with this. It felt to me that we were wasting a lot of time with all the emotional stuff and it sure didn't get worked out.

By the way, I have to apologize for my losing it too. I know that didn't help.

Lawyer: Well, we do all understand that going through a separation is a huge crisis and all kinds of feelings are understandable. But I have to agree that yesterday, it was pretty tough keeping us all focused on the problems that have to be sorted out.

There are several possible resources that might help. Firstly, you both could have what we call a 'Process Coach'. Your coach would give you each the emotional support that you need to help you be your best self in this process. The Coach takes time with you to understand better your emotional issues. Then, you can figure out which feelings are related to your relationship and the break-up and which are real concerns about the children and about the finances. Then there's a better chance that the emotions don't interfere with our problem-solving.

Client: well you know, I do have a therapist already. and she's really a support. I know - just by how she says 'mmmmm' - that she agrees with me that Joe is the biggest jerk in the world. Now wouldn't she be able to be my coach? On second thought, I'm not sure because I know she thinks

that I should just have my day in court anyway and not have to negotiate with Joe.

Lawyer: Well - sometimes therapists also act as coaches but often, the coaches can help by liaizing with any therapists involved to make sure that we're all going in the same direction - one that will be as good as possible for you given this situation and also one that will work well for the children.

Client: Well that sounds good. But do you think for sure that even if we make some progress emotionally this would translate into our behaving ourselves in the next collaborative meeting?

Lawyer: Well it can be enough - or - sometimes the Coach or someone else joins us for meetings as a Facilitator. That job is just to help us all stay focused on the issues at hand. The Facilitator would watch out for any emotional stuff and help us all keep that away from the issues at hand.

Client: well all of this sounds great but couldn't we end up having a cast of thousands working on this case.

Lawyer: - Well, it doesn't necessarily have to be that way. It sounds like we should start with the Parenting Coordinator as that's what you're most concerned about. It may be that if you are successful in working with the Parenting Coordinator, that person might be able to help us with issues in the meetings and perhaps also be a Coach for you and Joe. Many parenting coordinators have the skills to be a Process Coaches and Facilitators. They are just wearing different hats.

Client: well that sounds good but I don't think I'd want my coach to also be Joe's. I'd guess that my coach would end up getting swayed by him and thinking that I'm some kind of a freak. He's a real charmer you know.... well anyway he charmed me.

Lawyer: Well I guess if we start with you and Joe meeting with a Parenting Coordinator, we could then see what makes sense from there. You might feel comfortable about the coordinator being a Coach for you both and a facilitator - and if you are a bit worried about this, we could go to 2 coaches who might jointly facilitate the meetings.

In the Collaborative Process, we're coming to understand that no one model about how to build a team works for everyone. It seems better to sort out, as we go, what's needed.

Client: Well thanks (name of lawyer). I feel much better about all this and I'm really hopeful that we can do it.

Working With Other Collaborative Professionals A Financial Planner's Perspective

Kurt Rosentreter, CA, CFP, CIMA, TEP, FMA
Berkshire Securities Inc.

Collaborative Family Law Practice



The Law Society of
Upper Canada | Barreau
du Haut-Canada

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Working With Other Collaborative Professionals A Financial Planner's Perspective

By Kurt Rosentreter, CA, CFP, TEP

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From a financial planner's perspective, I believe that the collaborative process needs to have clearly defined process guidelines, terms of engagement, standards, and other measures to preserve the integrity of the process while also protecting clients and advisors.

I have identified several areas that should be addressed before any financial planner is engaged as part of the advisory team in a collaborative case:

1. Objectives of Engaging Financial Planners Within the Collaborative Process

- Education, neutrality & objectivity, technical expertise on money matters
- Finite term of work during counseling process vs. ongoing term and range of services as long term financial partner after divorce.
- Should use of financial planners be mandatory on all collaborative engagements?
 - Question: Should a lawyer be doing financial calculations?

2. Framing the Engagement Process (see Kurt's flowchart)

The following steps outline the work of a financial planner involved in a divorce case:

- Phase One: Net worth determination pre-tax and after tax; recommendations
- Phase Two: Spending and Income Summary; recommendations
- Phase Three: Assistance with Investments, Insurance and long term financial management post-divorce.
 - Key: Different financial planner for phase three to preserve objectivity.

3. Defining the Terms of the Engagement

- Mandatory engagement letter between financial planner and clients that states:
 - Description of role, Representations, Timelines, Fees, Procedures to be performed, Use of third party experts (e.g. business valuator)\
 - Borrow expertise from CA industry on crafting engagement letters
 - Different versions for different kind of financial work
 - Should these letters be professionally designed with one standard?

4. Defining the Client

- Should financial planners be engaged by the lawyers?
 - Or engaged by the two clients impartially?
- Invoice fees to one client or both in order to preserve perception of objectivity?

5. Communication Standards

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- Engagement letter critical (described above)
- Identify client expectations and summarization of net worth and cash flows
 - Ensuring existence of data
 - Ensuring completeness of data
 - No material purchases if possible during collaboration process
 - Agreement on process.
- Agreement on neutral engagement of financial planner by both sides equally
- Both parties to be copied on all correspondence
- Limited and defined use of email
- Commitment to timelines, deadlines and to providing adequate meeting time
- Standardized documentation and file maintenance procedures and templates
- Use of financial planning software (e.g Divorcemate, Finmetrics, Naviplan, etc.)
 - Restrict amount of output
 - Assumptions to be reviewed by all parties
 - Ensure the software is used as a tool only, and not the crutch for a financial planner who otherwise lacks expertise to do calculations
 - How do the lawyers and clients know the software works right?
- Addressing client sophistications levels
 - Modifying your approach to speak to competency levels
 - How far does a lawyer / planner have to act as a fiduciary over a passive spouse who is prepared to accept an insufficient deal?

6. Defining Neutrality

- Objective advice from a financial planner
 - Should represent both sides equally
 - No opportunity for assisting with implementation and sales of products after divorce
 - No indirect benefit from having others assist with implementation and sales of products after divorce (e.g. another advisor in your firm, spouse)
 - For planners and insurance agents assisting with product purchases, provide full disclosure of personal compensation and second, only offer a fee based approach to investment management (no commissions).
- Objective advice from a lawyer in selecting a financial planner
 - Problem: Lawyer refers product business to brother-in-law broker, neighbour or broker for their own RRSP
 - Problem: Lawyer fails to provide choice of 1, 2 or 3 product sellers for the client to choose from
 - Problem: Lawyer fails to provide choice of product pricing and product choice
 - Examples of possible conflicts: a single insurance agent selling only permanent life insurance instead of term insurance or second,

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a broker selling only internal company proprietary product or third,
an insurance agent selling only one insurance company's products.

7. Quality Control of Financial Planners Used

- Identify work that is required in the client engagement
 - 1. Initial phase one and phase two planning work
 - Tax planning
 - Cash flow forecasting
 - Specialized business valuations
 - 2. Implementation assistance with product sales and management post divorce
 - Insurance and investment product selling
 - Cash flow management
 - Tax return preparation
- Influences type of expert needed
 - Can one planner do it all? Should they be allowed to?
- Planner competency
 - Professional designations (which ones and why?)
 - Work experience with divorce
 - Is a product license a threat?
 - Is there a need for a Collaborative Law Assoc. Approval Process for being a financial planner available to collab. Lawyers?
 - Is a training program needed for financial planners who want to be part of the process?
 - Technical training
 - Mediation
 - Collab process
 - Role playing
 - Exams?
- Product sellers selected to help with implementation of financial plan, sale of investment and insurance products, tax return preparation and ongoing financial handholding, education and maintenance.
 - Must meet approval standards of Collab. Law Association?
 - Issues: single company providers, compensation biases, corporate proprietary products, lack of disclosure, lack of expertise in the collab. process
 - Solution: product sellers should be limited to the approved advisor list only.

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- Advantage: permits planners doing the consulting before divorce to share in revenue windfall from implementation phase

Downside Risks to Collaborative. Planners and Lawyers

- Random referrals to favourite brokers and insurance agents for product sales
 - Should you care whether they sell a fund or a stock?
 - Should you care whether they sell permanent insurance or term?
 - Any recourse on the lawyer if the broker loses all the money in the stock market?
- Passive spouse running out of money in ten years
 - I thought the financial planning software said I would make it? Is the lawyer at risk?

Dominant / Passive Spouse Standards

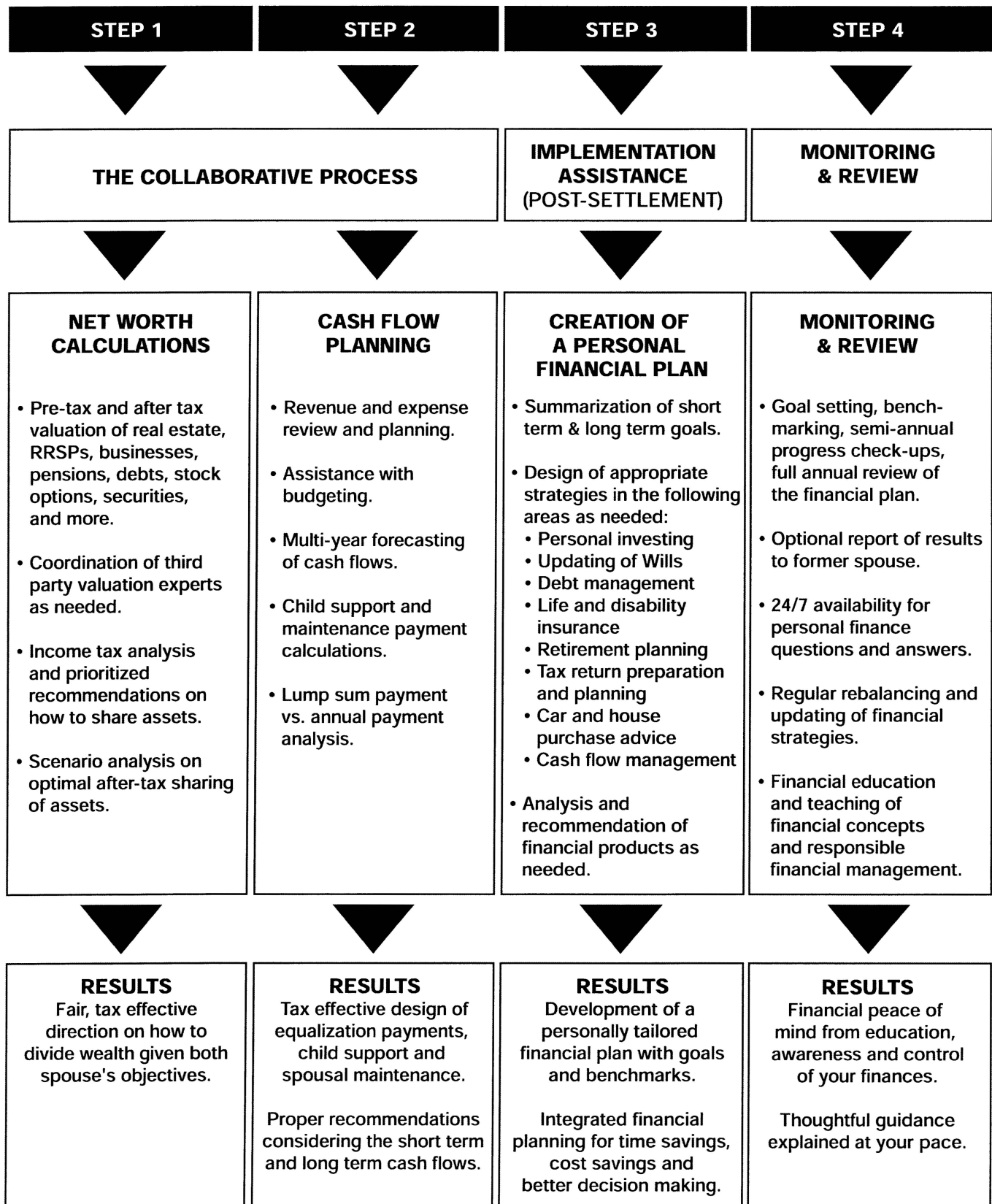
- How to preserve fairness when a dominant spouse is wanting a “quickee” divorce
 - Mandatory procedures for all engagements
 - Engagement letter
- Protecting the planner and lawyer against poorly educated, passive spouses
 - Legal release forms – is that enough?
 - Advisor’s fiduciary role as guardian even when a passive spouse is saying no.
 - Second opinions on key issues / peer group case reviews
 - Resigning the case.

Gender Balance

- Potential discomfort of a male entering a collaborative advisory team situation consisting of all females (lawyer, coach, planner, etc.).
 - Need more men in the collaborative. process as a resource.

The Advisory Process

Financial Education • Accountability • Control • Peace of Mind for the Rest of Your Life



Financial Expertise • An Objective Opinion • A Caring, Trusted Resource • At a Time when You Need it Most