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Pushing a different path for warring couples

Collaborative law is a far less expensive way of settling separations

DEBBIE GUEST

SEPARATING couples looking to avoid bitter litigation and massive legal fees are increasingly turning to a co-operative approach to family law that lets them, not a judge, decide their future.

Called collaborative law, the Law Council of Australia is poised to release its inaugural guidelines on the approach, as an increasing number of lawyers around the nation train as specialists.

Veteran Perth family lawyer Penny Keeley has practised collaborative law for the past two years and says the system allows couples to retain a civil relationship while avoiding court fees that can run into hundreds of thousands of dollars.

A family lawyer for 30 years, and founding partner of Clairs Keeley Lawyers, Ms Keeley said she had seen couples engage in endless disputes before the courts at a great financial and personal cost.

"I've seen people arguing over money years after they've separated and going back to court, time and time again, wanting some-

body else to make decisions about when children should be returned, how much time they should spend with each of them, what happens at Christmas, whether they do sport, who should be paying school fees," Ms Keeley said.

She said taking a litigation approach in family law meant couples focused on their disagreements and took the view that there would be a winner and a loser. "The process is one that has the effect of increasing the antagonism between parties because there is a focus on what each sees as their entitlement — whether it's to do with children or money — and the other is seen as blocking that entitlement."

The opposite approach is taken under the collaborative system, which sees couples sign an agreement that issues will be resolved without going to court or threatening court action.

There is also a condition that if the approach is not successful, lawyers for the parties cannot go on to represent their clients in a litigation process. Ms Keeley said this gave both lawyers and their clients an incentive to resolve the dispute co-operatively.

Couples undertaking the process also have to agree to disclose all important information, find solutions that are acceptable to both of them and focus on the best interests of their children.

The system encourages parties to act in their own interest, instead of in a way that put the other party at a disadvantage.

Ms Keeley said the non-adversarial process involved meetings between the couple and their collaboratively-trained lawyers where the ultimate aims of each party were discussed. "By doing that you focus on what you can agree on, rather than disagree on," she said.

To resolve disputes under the system, each partner pays between \$4000 and \$7000. Ms Keeley said, in comparison, the first two stages of a litigation alone cost this much and disputes that went to trial could come at a cost of \$100,000-plus.

"It's less expensive and less traumatic than going to court . . . They can also control the outcome and you can't do that if you go to court."

Ms Keeley said in her experience the majority of couples did not want to fight each other, but wanted to come to an agreement. It was just that they did not know how.

But, while she would love to solely practice collaborative law, the system was not for everyone and if both parties were not willing to negotiate, the process was doomed to fail. "This is not a universal panacea," she said.

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MARIE NIRME

Penny Keeley says lawyer-negotiated 'collaborative' settlements are far less traumatic for families