

Episode 17: Summary

Episode name: Stop, Collaborate and Listen: Collaborative Law

Guest(s): Leona Bennett and Shelby Timmins

What area(s) of law does this episode consider?

The use of collaborative law in Australia, particularly in family law.

Why is this topic relevant?

Collaborative law, also known as collaborative practice, is a method of dispute resolution, focused on resolutions, not entitlements. It side-steps the adversarial legal system and instead invites lawyers and their clients to work together to reach a solution that works for both parties.

Collaborative law is particularly suited to family law, but it could become a cost effective and quicker form of dispute resolution in any sort of relationship-based area, including for Family Provisions Act claims and shareholder disputes.

What legislation is considered in this episode?

1. *Family Law Act 1975* (Cth).

Particularly section 60I which mandates that parties must attempt alternate dispute resolution before applying for Part VII order, that is a parenting order. Section 60I(9) states that the exception to this is where there has been, or there is a risk of, family violence or child abuse.

2. *Family Law Rules 2004* (Cth)

Rule 13.04 requires the full and frank disclosure of parties to a financial case of their financial circumstances.

What are the main points?

- Collaborative practice is a form of alternative dispute resolution. The parties, their lawyers and experts enter into a formal agreement to focus on settlement rather than litigation. The parties then meet face-to-face to discuss their respective interests, rather than legal entitlements should the matter proceed to litigation.
- In regards to family law, the advantages of collaborative practice are that it:
 - provides a formal structure focused on positive child focused communications;
 - provides legal advocacy support during collaboration;
 - removes the immediate threat of litigation;
 - encourages parties to develop a trusting alliance for future parenting;
 - focuses on interests, not positions;
 - minimises the time of lawyers;
 - utilises the expertise of independent experts.

- Collaborative law can help families achieve a quicker dispute resolution without the need to potentially wait years for a court date.
- Collaborative law relies on a more human, emotional approach to discussing the issues at hand that is more suited to the often sensitive nature of a family separation.
- Collaborative lawyers must cease to act for clients where the matter proceeds to trial.

What are the practical takeaways?

- Collaborative law has been practised in the USA and Canada prior to adoption in Australia; in those jurisdictions it began in family law but has since been used to resolve medical, employment and other civil disputes.
- Collaborative law is often compared to mediation; however mediation does not preclude parallel court proceedings in the same way that collaborative law does.
- Mediation is often based on positional bargaining where the parties overestimate their needs and interests; this differs from interests-based negotiations which looks at the underlying interests of each party and focuses on solutions that meet the needs of both parties.
- Collaborative law is based on 'four-way meetings' where the parties and their lawyers meet and receive advice, exchange information and communicate their respective interests openly in front of each other.
- Keeping an agenda is beneficial in collaborative law meetings and discussions to readdress what the parties' ultimate goals are and to ensure the discussion remains focused on the issues important to the parties.
- Coaches, or facilitators, help the parties and their lawyers to communicate in an open dialogue and binds the interdisciplinary team together.
- Financial neutrals, such as accountants, are professionals that can be used in the collaborative process to assist with presenting, budgeting and projecting financial information concerning the issues between the parties. Other neutrals could include psychologists, mediators, social workers or child consultants.

Show notes

[Relationships Australia NSW \(RANSW\) Collaborative Practice Training Course](#)

[Australian Association of Collaborative Professionals \(AACP\) Membership](#)

[Clarrisa Rayward Collaborative Law Course](#)

[Collaborative Professionals NSW's article 'Mythbusting – Agendas in the collaborative process'](#)

[Collaborative Professionals NSW – Become a volunteer note-taker](#)