



May 2020

The Benefits of Collaborative Law During COVID-19

Due to the COVID-19 outbreak, the Hong Kong Courts were closed for several months and thousands of court hearings were adjourned during this General Adjourned Period ("GAP"). Although the Family Court has now reopened there are social distancing measures in place which mean that hearings are continuing to be adjourned. We expect this to be the 'new normal' for some time to come.

Divorcing couples will face an even longer waiting period before their cases will be heard due to a backlog of cases. In addition, the current situation has created significant challenges relating to children matters. We are seeing an increase in the number of disputes between parents which stem from the unprecedented situation COVID-19 is presenting. For example, disagreement between parents on children's access schedule as the school suspension period is neither holiday nor school term time.

The COVID-19 outbreak does not only affect couples already going through a separation or divorce process. People have been required to self-isolate and stay at home as a preventive measure to flatten the curve of the spread of the coronavirus. For couples who are having difficulties in their relationship, staying under the same roof for a long period of time will be an added pressure.

We might see a spike in divorce cases being filed in the coming weeks as the Family Court resumes service.

Collaborative Practice

A possible solution is the use of the collaborative law process. Collaborative practice provides for a four-way meeting for the parties and their lawyers to work "collaboratively" and try to reach an agreement on the outstanding issues without resorting to the court.

Main features of the collaborative practice:

GALL

- *Voluntary* – The process is voluntary. All parties involved, including the collaborative lawyers, sign an agreement confirming that they agree to negotiate in good faith and try to reach an agreement that is mutually acceptable.
- *Legal representation* – Parties must be legally represented during the collaborative law process: they engage lawyers who are collaboratively trained for the purpose of settlement negotiations, i.e. their relationship with the collaborative lawyers terminates if the parties decided to litigate
- *Experts* – Parties can jointly engage experts (for example: a child psychologist on children related matters or a tax expert on financial matters) to provide their professional views to assist the parties in the negotiation process.
- *Confidentiality* – The process remains confidential among the participants.
- *Amicability* – Collaborative lawyers are trained to focus on having sensible, interest-based negotiations and assisting parties to reach an agreement without resorting to litigation.
- *Control* – The parties are in control of the process and the pace of the negotiations in order to come up with a tailor-made solution to resolve their issues.
- *Save time and costs* – The process is efficient as it only involves working around the diary of the parties and the collaborative lawyers and not subject to the court schedule.

The advantage of collaborative practice is for couples to try to resolve the issues and reach an agreement at a meeting (or series of meetings) with the assistance of their lawyers. With everyone sitting in the same room, the parties can focus on the issues at hand and try to resolve them in a professional, practical and sensible way. It avoids the time and costs involved in solicitors' correspondence and the preparation of court documents, and most importantly it helps to manage the emotions of the parties involved.

The Hong Kong Collaborative Practice Group has written to the Hong Kong Judiciary in respect of collaborative practice in Hong Kong. There are about 70 lawyers in Hong Kong that are collaboratively trained, including our Head of Family Team, Caroline McNally.

Conclusion

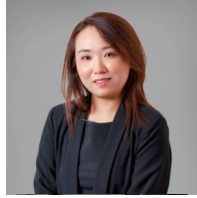
The unprecedented situation of the Family Court having been closed for an extended period has put the spotlight on alternative disputes resolution options to address issues arising out of relationship breakdown. Collaborative practice should be considered by parties as an alternative process by which they can fast track process and help carefully manage the emotional fallout at the end of a relationship.

GALL

Contacts



Caroline McNally
Executive Partner
Tel +852 3405 7629
carolinemcnally@gallhk.com



Loretta Ho
Associate
Tel +852 3405 7626
lorettaho@gallhk.com

All material contained in this article are provided for general information purposes only and should not be construed as legal, accounting, financial or tax advice or opinion on any specific facts or circumstances and should not be relied upon in that regard. Gall accepts no responsibility for any loss or damage arising directly or indirectly from action taken, or not taken, which may arise from reliance on information contained in this article. You are urged to seek legal advice concerning your own situation and any specific legal question that you may have.