RECLAIMING ADVOCACY

By: Nancy Cameron, Q.C.[1]

As we approach collaborative law's fifteenth birthday, the metaphor of adolescence is particularly vivid. Like adolescents, we are at times certain of our place in the world, of our immortality, and convinced we are wiser than our parents. Then we have a particularly rough four way, or a file that explodes out of process. We retreat, wondering, are we so smart, after all? Is there something we can learn by looking at history? How do we navigate this awkward transformation: from gawky adolescence to assured professionalism?

The French word for lawyer, *avocat*, speaks to the heart of our professional role. How we reclaim advocacy, how we make this word resonate for collaborative practitioners, is what I see as the developmental task of our professional adolescence.

If we are to move advocacy from the adversarial process into a collaborative process, we must be particularly attune to both process and outcome perspectives. Since collaborative process will only yield a result by agreement, a "winner take all" result is not only unlikely but, if it were to occur, would be a serious indicator of flawed process.

As an advocate in the courtroom, I have learned that defining my success by the end result is a bit like dieting: a great success at trial may lead to a great defeat at the court of appeal, in the same way that most who shed weight through dieting regain it. In the complex world of family reorganization, success on a monetary issue for one spouse may be the one event that yanks the card from the bottom of the card house; the effect on other parts of the family dynamics may be catastrophic for both parents and for the children. A senior litigator once told me, when I was in my first few years of practice, "Sometimes you can be too successful, Nancy, and in the end it doesn't serve your client well." Yet within the adversarial paradigm, outcome is the yardstick against which effective advocacy is measured.

In collaborative practice, we cannot turn to outcome as the only tool for developing a working definition of advocacy. Nor can we ignore outcome entirely. After all, it is precisely for outcome that our clients retain us. I have yet to have a client walk into my office and say, "Here is my retainer, I don't care what the outcome is, I've heard such great things about the process."

How do we define a good outcome? Is there a definition that is broad enough to capture the diversity of our work yet specific enough to actually help inform our professional skill? Often in this work we speak of detaching from outcome. This is, of course, not what we do. We are being paid to help lead our clients towards an outcome. But what we are doing is detaching from a specific outcome, and reframing what a successful outcome is. In attempting to build a comprehensive definition of outcome, I suggest that a successful outcome must:

---

[1] Portions of this article appear in the book **Collaborative Practice: Deepening the Dialogue** by Nancy Cameron available at www.nancy-cameron.com

- Meet the highest prioritized needs of each client,
- Protect and safeguard the children's well being and security
- Maintain (or, if necessary repair or create) a working relationship between the clients
- Be practical enough for the clients to be able to live with and carry through
- Be informed enough by the legal backdrop to withstand judicial scrutiny
- Do no harm

As advocates in collaborative process, we are like the sand in the egg timer, with process one-half the egg timer and outcome the other half. As advocates, we guide from process to outcome, while at the same time outcome (as defined above) informs the process. Just as the sand easily flows one way or the other, depending upon a turning of the egg timer, as advocates we are equally concerned with process and a mutual definition of outcome. Depending upon where we are at a given time (where the sand is predominately gathered) our focus may be more on process or on outcome.
What do we, as advocates, bring to the process? If we use the above definition of outcome to build our advocacy role within the process, our role takes on a number of functions:

- Working individually with my client
    - Assisting my client to articulate and prioritise her needs
    - Assisting my client in analyzing and sorting through conflicting goals
    - Educational role including:
        - Giving legal advice
        - Educating about children's needs through the separation and divorce process
        - Educating about adult pathways through divorce
        - Normalizing behaviour
- Reconciling our obligation to collaborative process and our obligation to our client.
    - What happens if these roles conflict?
    - Screening and informed consent
    - Directive role with out clients
- Building a good relationship with the other advocate; teamwork
- Process facilitation:
    - Co-managing the four-way meetings with the other advocate
    - Identifying when independent, objective criteria are needed, and developing processes around how to gather this
- Personal role: Self awareness so that I do not become the problem

Many of these functions overlap. Some are similar to the traditional role of a neutral mediator. Individual work with the client and a relationship with the other advocate have qualities that, on the surface, resemble the traditional role of advocacy. If we are to build a new definition of advocacy, then our task is, in part, to meld and expand these seemingly disparate process roles.

Individual Work with My Client

When I ask my client what she wants or needs from me, I regularly receive the following:

- Assist me in (or guide me towards) reaching a resolution.
- Advise me of the law
- Make sure I don't get taken advantage of
- Help me speak up and articulate my needs
- Help me get "what's fair"

Articulating what fairness means for each of the spouses, and further articulating a common definition, becomes a central part of this work. This involves setting out a process to work with our clients in helping them identify the specifics underlying their concept of fairness.

Part of my training as a lawyer has involved distancing myself from my client's needs and from my client's emotional reactions. As a courtroom advocate, we are always walking into an arena that defines either winners or losers, or "mixed success". Half the advocates that walk out of a courtroom on any day have lost. Although an athlete may have many goals other than winning the race—to finish, to have a personal best, or to come in the top ten—an advocate is not in court unless he is there to win. No other job sets one up so regularly for failure. In order to survive within this career, we have all learned early on to disassociate ourselves from our clients. In this way, we are separated from the loss, we have not lost; we have followed our client's instructions. The client may have lost, but contractually we are insulated from this loss. Except on contingent-fee cases our success and our contractual remuneration are largely unrelated.

Within our new definition of advocacy, the first piece of the advocate's armour that must fall away is this distancing from the client. My work with my client changes from the moment he crosses the threshold into my office, and is defined differently right through to the signing of the final agreement. I have found that I do this work best with my heart open. In a courtroom I worked with my intellect as sharp and as focused as I could make it, and out of self-preservation, I was careful to build the protection necessary around my heart. I am not suggesting that one's intellect is not required for this new advocacy; rather, I am suggesting that the intellect is informed by an open heart.

In order to work effectively with my client I need to be able to enter a realm with him where he is free to look beneath his fears, under his positions, through and around his desires. I need to be both perceptive and receptive enough to engage in this dialogue, empathetic enough to enable my client to dialogue freely with me, while honest enough to be able to give him the broad perspective needed to reach settlement.

The work I do with my client to help her assess her needs, prioritize them, and sort through her conflicting goals is ongoing work. It begins in the first appointment (often with the discussion about process needs). We look to her needs and desires in a broader context than the purely substantive legal arena. Although the substantive legal context of rights and obligations is part of what informs my advocacy, in this model I am equally concerned with relational matters. My advocacy role is to explore, analyze, and prioritize both the substantive and the relational with my client. This work continues right up until final settlement, as we measure the proposed settlement against her prioritized needs, and determine if it meets her settlement goals and her long-term goals.

This work with my client becomes the skeleton for the new advocacy. Though it is not the only new skill I need, it is the structure that will carry my role as advocate. It is nourished by the veins and arteries that become my professional relationships with my colleagues. The muscles and joints are components that assist in successfully moving through process. The intellect, both my knowledge and understanding of the law, and my role as an educator, is an integral part of this new advocacy. But, unlike what they taught us in law school, the intellect is only one part.

Delivering Legal Advice

In the work that we do, there are some fairly simple legal points (what's the guideline child support for two children on $40,000 income?). There are also legal issues that are rife with discretion (how long should spousal support be paid?). As collaborative groups form and lawyers begin doing cases together, lawyers struggle with the question: How do we give legal advice without anchoring our clients into positional bargaining? The experience for many new collaborative lawyers has been, if they give very specific outcome advise during the first interview their client expects this outcome. Once the lawyer has a broader view of the facts, or the clients begin to set some principles to define fairness, the original outcome advice has a tendency to push clients into debate, which may be fueled by conflicting outcome advice that has been given by each of the lawyers.

As I ponder how to give legal advice in the collaborative model, I realize that there are many ways we give advice, and that it is often imbedded in conversations with our clients. The following "definitions" of legal advice help us realize what an integral part of the legal representation legal advice is, and enable us to consider more deeply how we approach this task in collaborative practice. Legal advice can take a number of shapes, including:

- An opinion about the application of the law to the facts
- An opinion about the probable outcome if the facts were adjudicated by a third-party decision-maker
- An opinion about the range of possible settlement outcomes considering the legislation and case law
- An opinion about the range of possible settlement outcomes considering the highest prioritised settlement needs of each spouse
- A discussion about what the relevant legislation sets out, with some clarification as provided by case law
- A discussion of the interplay between process and substantive law;
- An acknowledgment that law is a vital and changing entity, particularly in relation to families and this, coupled with the diversity of individual facts, limits the number of hard and fast rules
- A backdrop discussion to return to as a benchmark for fairness
- A discussion about process choices and likely consequences of different process choices, and
- A discussion of process choice, related cost (including financial, emotional and relational) and outcome variables.

Legal advice depends on the factual information that the lawyer has, the substantive knowledge the lawyer has, and the experience the lawyer has had. In order to be able to come to collaborative consensus, it is critical that everyone be making decisions with the same fundamental information.

Legal advice will likely be given in different ways. This will include substantive conversations, as well as "one-liners" that a lawyer says to a client that the client then anchors onto. It is important for both spouses to know the parameters of the legal advice the other has received. It is equally important that the lawyers communicate fully and honestly about the advice they have given their respective clients. This can be done in a number of ways. Lawyers can, in their pre-meetings, talk to each other about the legal advice they are giving their clients. If there are areas of disagreement, the lawyers can decide how to work with this in the particular circumstances of the case. It may be that the areas of disagreement arise because of discretionary aspects of family law. This may become a topic to be discussed within the four way, so that both parties have the same information and a dialogue can ensue about building a solution that meets the needs of both parties. Sometimes lawyers choose to give legal advice jointly within a four way meeting. This ensures both clients have the same legal information. However, if this is the only time legal advice is given, delivering advice in this way may not meet the individual needs of a client to personally assess different outcome options against the legal framework. If all legal advice is given only within the four way meeting, some clients may feel as though they have not had an opportunity to fully digest and weigh all legal information with their lawyer.

Legal advice plays a role in advocacy, but is not the guardian of the process. It is an important benchmark for binding agreements and a valuable piece of legal representation. It is also such an integral part of the milieu that lawyers inhabit that we often don't realize the more casual pieces of legal advice that we give. Nor do we always realize which pieces of what we say anchor our clients, and which pieces they don't hear. In collaborative practice, we are endeavouring to give legal advice in a meaningful way, recognizing all the different ways that we have learned to talk about the relationship of the law to particular facts. We are also trying to be mindful of building a relationship with the other lawyer that is non-adversarial, which includes building a dialogue about legal parameters, instead of a debate about the law and particular outcomes. Managing this while at the same time ensuring our client's need to understand legal parameters and receive advice as it relates to her particular situation may challenge new collaborative practitioners. Maintaining transparency and open discussions with the other lawyer about advice will help shape these conversations into collaborative dialogues.

Educational Role

If I describe my role as advocate within the collaborative process as an arc, my goal for the far end of the arc is to have worked with my client successfully enough that she has the skills to advocate for herself while keeping the interests of her children in the foreground. Although I welcome my clients to contact me if they need assistance in revisiting details of their agreement, the true measure of success is that both parties have developed a process and a definition of resolution that allows both of them to negotiate into the future. Just as their marriage was not stagnant, neither will their co-parenting proceed without ever needing to change or be re-visited.

My role as an educator has many aspects. Using the arc of advocacy, my educational role at the beginning of the process includes education to normalize the divorce process. As well, I work to lay the educational framework for a family transition that, as much as possible, maximizes a healthy outcome for all family members. This includes working with my client about what her future may look like, about what she needs now in order to work towards that future; about what resources are available to her in order to move to there from here.

Just as my advocacy is composed of process and outcome components, there is a part of my role as advocate that is as an advocate for the children. I do not see this as separate from my role as an advocate for my client, because I have never had a client whose needs aren't linked with the need for a healthy outcome for his children. There may be much smoke obscuring the entanglement of a client's desire and the children's needs. This is one of the challenges of my advocacy role, to clear away the smoke and lead my client to a clearer ability to differentiate between her needs and the children's needs.

It is normal for a parent to assume that he or she knows what is best for the children; after all, the very nature of our parental role in our culture demands that we keep what is best for our children in the foreground. As one goes through the difficult transition of restructuring one's family, to have to do a clear and honest assessment of what is best for one's children despite one's own needs is perhaps the most difficult work that must be done in the divorce transition. Part of my role as an advocate is to ensure that my client has all the information he needs. If I am working with an inter-disciplinary team, this education can come from divorce coaches or a child specialist. If we are working with lawyers only, then part of my role is to provide this information to my client or to refer them to a source where they can obtain this information. This includes information about children's developmental needs, age-appropriate parenting plans, and children's needs through divorce. I maintain a library in my office so that I can direct clients to written resources, or lend particular books to my clients. I order some parenting books in bulk so that I can give them to clients when this seems appropriate.

The divorce transition can be a painful, tumultuous time. People often surprise themselves with their reactions, with their thoughts and their resentments. As I define my role, part of my task is to normalize those behaviours and experiences that are a normal part of the transition. It is also important that I be able to recognize those behaviours that are outside of the norm, and to make certain that my client is getting the support she needs if her behaviour is problematic for her or for other members of the family. A thorough knowledge of adult pathways through divorce is an important part of my personal education that helps inform my ability to be an effective advocate for my client.

This educational role is often the gathering trajectory of the advocacy arc. At its apex is the difficult maneuvering necessary to close the final gaps to bring about an agreement in principal. On the descending trajectory of this arc are the equally important steps of drafting, completion of an agreement, and decisions around the method of processing the divorce and what will be contained in the order.

The clients that I have had the delight to work with that want the most from the collaborative process are the ones that have taught me about the last piece of my job as an advocate. This is to assist my client in building the skills necessary to walk into the next chapter of her life, confident enough to advocate for herself, and also confident enough to know she needs to call me for some assistance.

Reconciling our obligation to collaborative process and our obligation to our client.

Professionally, our canons of ethics set out both an obligation to our client, and an obligation to the court. Placing the obligation to the court over our obligation to our client serves to reinforce our trust in the court process. As between the obligation to our client and the obligation to the court, the obligation to the court takes precedence. We can work within the court process with at least the assurance that our professional colleague, although our adversary in the courtroom, is adhering to the same sacrosanct rule, he will not knowingly sanction false evidence.

In collaborative practice, we have contracted to resolve matters outside of the courtroom. Contractually, we agree to work within a framework that preserves our ability to be able to rely on the process, without fear of being taken advantage of. We agree not only to negotiate in good faith, but that we will terminate the process if we know that our client is not negotiating in good faith or is withholding vital information. As many collaborative colleagues have said, in collaborative process, trust is paramount. This presents a problem for those of us who have, either by nature or by training, operated from a paradigm of not trusting our professional colleagues unless we have built up a working relationship of trust, or we are in a court room (when we trust our colleagues not to subvert the justice process).

I am going to suggest that, since we have eschewed going to court in the collaborative model, the hierarchy of our ethical framework needs a corresponding adjustment. This adjustment is articulated in the participation agreement, however from what I have witnessed it is a difficult adjustment for us to make professionally. Just as the adversarial paradigm works *because* lawyers place their duty to the court above their partisan duty to their client (regardless of my instructions from my client, I will not sanction false evidence, I won't initiate frivolous law suits), the collaborative process will only work if lawyers adhere to the essentials of collaborative decision making. This means a new kind of directive relationship with our clients. Even in the adversarial framework of partisan agency, we have had a directive role to play with our clients. We have been directive about document production, about disclosure as required by the court, about evidence and the necessary components of building a case. Beyond that, lawyers have certain directive styles that they adopt within their litigation practices. Some lawyers tell their clients what to wear or not to wear to court, how hard to look for employment, whether or not they are allowed to speak to their spouse. Most lawyers are directive about disputes (or components of a dispute) they will not take into a court forum, either because of the trivial nature of the dispute or because the client's position is clearly unsupportable at law.

Within collaborative practice, our directive role is different. How do we reconcile being directive within a self-determination model? The directive components of this practice perform the work of process tent poles. They are the tent poles necessary to sustain the overarching process tent to allow our clients to work within a self determination model. Clients have come to us because they need the additional support of collaborative process in order to work within a self determination model, otherwise they would have resolved matters on their own. Unless we are in professional agreement

about what the tent poles are, and have an unwavering commitment to this, the tent is in danger of collapse.

The Directive Component; Guiding Principles

Our relationships with our clients are diverse as our clients themselves. There are clients who will come into collaborative practice with the skeleton of an agreement already in place, needing only limited advice and assistance to come to complete resolution. Other clients will need more time, more direction, and more assistance in moving through impasse. It is particularly this latter group of clients that call upon some directive skill. Having moved into collaborative practice, lawyers sometimes find it difficult to offer direction without offering solutions. Areas that call for direction are: parameters around good faith negotiating, building collaborative process components, and building communication skills.

Negotiating in good faith includes a number of factors. It requires a commitment to work towards a resolution that meets the needs of both spouses. It means our clients need to understand they must make prompt and full disclosure of all relevant information and produce all relevant documents. In order for both spouses to be able to negotiate together, both spouses must commit to the principle of making certain that all the information and expertise each of them needs to build towards solution is available. This means that clients must take responsibility to not only ensure they have the information they need, but to support their spouse in obtaining the information he or she needs. If one spouse needs to have financial projections in order to be able to make decisions about support levels, collaborative process requires the cooperation of the other spouse in obtaining this information within the process. In litigation, process itself can become a tactic that an advocate uses to help build a certain outcome for his client. In collaborative practice, lawyers **must** work collaboratively on process components. This is one of the core values of the practice model, and is one of the most difficult concept for lawyers to adjust to. It is an important part of informed consent. It is also an important part of what we promise our clients when we engage in a collaborative law retainer.

Working with our clients on the task of thinking into the future at the time of divorce can be difficult, and with some clients, daunting. Resentment, fear and anger serve to anchor us into the past. Many clients will come into our offices while these powerful emotions predominate. Our task is one of normalizing these emotions, while at the same time helping our clients detach from these emotions enough to be able to look into a new future. In working with our clients to do this, it may be necessary to talk about realistic outcome expectations. It will also be crucial to keep coming back to the client's settlement needs, and a prioritization of these needs.

Process fairness is of integral importance to clients. Assessing process fairness in a collaborative model will always involve looking at process from the perspective of both spouses, so it is necessary to build a commitment to collaboratively build process components. This includes relying on neutral experts, when necessary, and working towards balancing the process needs of both clients. This also includes being aware of the difference between the process needs of the clients and process needs of the lawyers.

Building good communication skills at a time when grief and fear are heightened may seem like an impossible task. Yet this is a crucial aspect of our role as a

collaborative lawyer: to assist our client in communicating with their spouse. This includes helping our client say what he needs to say in a way that the other spouse can hear it, and also to listen and assimilate what the other spouse has to say.

Much of the directive component plays out in an educational manner, but in order to facilitate good faith negotiating it is also necessary to "tell it like it is" in a respectful manner, and in a way that clients can hear this. This does not mean we are controlling outcome. The directive component is often work that happens between the four ways, which is why this part of the process is so crucial.[2] If I have developed a relationship with my client that is deep enough that I have earned his trust, then I can be respectfully directive in our sessions when we meet privately between the four ways. This is one of the tasks that my client has asked me to do, and forms a central part of my role with my client. It is akin to a sports coach, a teacher, a doctor; any number of relationships that we build where we rely on and expect direction from the professional.

Because particular process commitment is what separates collaborative practice from traditional advocacy, client screening and informed consent to collaborative process are imperative parts of our advocacy role. Client screening, although beyond the scope of this article,[3] is an extremely important part of our work. Informed consent to process options is a matter that, in a litigation practice, is sometimes absent. If a plaintiff commences litigation, a defendant has limited process options. If one spouse sets down a trial date, the other spouse, although he may be informed of options, cannot choose an option other than trial without his spouse's agreement. Because of the structure of the litigation paradigm, we have become less sensitive to true informed consent of our clients about process decisions throughout the management of a file. In collaborative process, we need to be particularly aware of the importance of informed consent. Collaborative process demands a dual function from the lawyers. We must simultaneously act as an advocate for our client while at the same time commit to teamwork within a specific process framework. Perhaps the greatest dilemmas for collaborative lawyers arrive from this dual role: What do I do if these roles conflict? What does my client expect me to do if these roles conflict? What if a good outcome for my client conflicts with our process commitments? Which do I hold my greatest allegiance to? If it is my commitment to process, has my client understood this when he consented to enter into the collaborative process?

Relationship With the Other Advocate

I am greatly relieved that the adversarial lexicon no longer shapes my relationship with my colleagues. Yet I will admit that sometimes my habits lead me more quickly than my reason. It is easy to discard the more rigid words from the definition of adversary (hostile, enemy, antagonist). However softer words (critical, opposed) still pop into my brain when the heat of negotiation rises.

So how do I reframe my relationship with my fellow advocate when we are no longer adversaries? And what do I do when my fellow advocate acts like we are still adversaries? It is fairly easy to reword a popular dispute resolution maxim and say, turn our critical skills away from the adversary and onto the problem. And this is perhaps a

[2] This is covered in greater detail in *Collaborative Process: Deepening the Dialogue*
[3] Client screening is covered in detail in my book, *Collaborative Process: Deepening the Dialogue*

good place to begin our reframing. However, many of us have already tried this in our history of resolving cases within the adversarial framework. Our experience with this has both of the advocates turning their skills on resolving the problem. But where are the clients? Traditionally, the adversarial model uses the advocates to separate the clients. Though we have shifted the adversarial model slightly by turning our critical skills on the problem, we are still maintaining the dominant adversarial posture of having the advocates separate the disputants. The danger of reframing our role in this way is that we lose the key component of a collaborative case, that is, the art of facilitating our clients to build a successful resolution that meets both of their needs.

Using the new advocacy, our role is to position ourselves in a place that allows our clients to remain central in the decision-making process, supported by their respective advocates, with everyone's critical faculties focused on resolution. This requires a vigilance that is new to me in my role as a lawyer. I try to stay in the background enough to allow the conversation that needs to happen between the clients, assure that there is enough overall balance that each party can say what they need to say, and that there is enough clarity in the room that each can also hear what the other has to say.

At the same time, I rely upon the alliance I have endeavoured to create through my individual work with my client. If I have done the necessary work to truly have an alliance with my client, then if I need to be critically honest with my client, I can do this and my client can hear it in a constructive way. In the adversarial model, this criticism usually comes from the other side and, even if it is an honest critique, the nature of the adversarial process makes its almost impossible for the one being criticized to use the criticism constructively.

In collaborative practice, we will find that there are some professionals that we work with easily and some that offer more challenging relationships. One of the things that I have observed is that lawyers begin to cluster into working groups. These may, in part, be geographic in nature. Even within geographic areas, lawyers will find that there are some lawyers that they are compatible with. This is usually because the lawyers trust each other deeply, have the same sense of what it means to be an advocate for their client, and can critique each other without being defensive.

Within collaborative practice we are, for the first time, taking professional responsibility for the utility of the process. An essential component of our role is as process guide. Unlike the mediator, who is usually acting alone, we need to coordinate this role with the other lawyer. To make the task even more difficult, the two lawyers are simultaneously building a relationship as process guides while at the same time being mindful of their role as an advocate for their client. This is a difficult balance to maintain, and one that can easily go off kilter if the advocacy component overtakes the role of joint process builder.

As we learn to distinguish between advocacy and adversarial behaviour, we realize we can be adversarial both in terms of positional outcome and in terms of process control. One of the ways that we have traditionally attempted to maintain an adversarial advantage was by maintaining as much control over process as possible. Because collaborative practice is so process-oriented, the opportunities to analyze process options from an adversarial perspective are numerous. As we learn to let go of our adversarial language, Adversarial Brain sometimes notices that she can take over process decisions. This is subtle behaviour, hard for us to see ourselves, though it is likely not lost on our

colleagues. We can do this by abdicating the directive component of our role: "I just can't get my client to pull those documents together," or "I just can't get instructions about that and my client won't come back to a four-way meeting." We can do this by attempting to build parameters around the assumptions to be used by a neutral valuator, or by wanting to dictate the role of a neutral financial specialist. We can do it around being positional in drafting the agreement.

These conversations with our colleagues may be our most difficult professional conversations. Our clients will come and go, but our colleagues are the people that we will be working with throughout our professional careers. We are not use to critiquing each other's work face-to-face (though I would be lying if I claimed this didn't happen regularly behind people's back in traditional practice). It is a difficult task to build this dialogue with our professional colleagues. It is an imperative task if collaborative practice is going to serve our client's needs.

To make things even more complicated, we often have multiple relationships with our professional colleagues—not only do we work on cases together, we usually work closely in a collaborative group together. Some of us train together, or prepare in-session trainings for our groups. How do we facilitate a collaborative conversation with our professional colleague?

Our role as a team player in building process is imperative to our new definition of advocacy. It is helpful if we explicitly give each other permission to offer constructive criticism. We can only do this if we mean it—if I am not prepared to listen to a critique it is only going to raise the tension between my colleague and myself if I give permission but don't really mean it. It is also helpful to set time aside to debrief, if there is a particular thorny patch that needs to be debriefed. Go to lunch. Go for a walk together. The time this takes is some of the most important time you will spend improving your professional skills. Work towards a neutral framing of the issue. You will likely both see a contentious issue differently. I find that I am particularly re-active to what I perceive as positional or adversarial behaviour on the part of my colleague. What I am less aware of is when I throw the first volley; toss out a dismissive line that sets my colleague up to respond defensively.

When we have had a difficult patch with a colleague and manage to move through it, be certain to acknowledge this. Let the other lawyer know that you realize how hard it was for her to sit back and wait for her client to speak on his own, instead of rushing in to speak for him, and how much you appreciate this. When you see a shift in the other spouse, take the time to acknowledge to the other lawyer (in your debrief) that you can see he has done tremendous work in preparing his client for the four way. Thank your colleagues.

We cannot expect our clients to engage honestly in vulnerable conversations if we are not willing to do the same. Done well, this work is much more difficult than what our professional role has historically called upon us to perform. To develop our potential as collaborative professionals takes humility, courage, and requires us to do both of these with an open heart. Having grown up in a profession that only uses the word "heart" in medical malpractice suits, these are difficult words for a lawyer to say. Collaborative practice is not a panacea, nor is it for everyone. There are clients that are not suited to this work and there are professionals who will not to be comfortable with its demands. For

those of us who have committed to it, one of the extraordinary gains is that the skills we use can enhance our personal, as well as our professional lives.

Co-managing the Four-way Meetings

When a lawyer first hears about collaborative practice, it is common for them to respond with, "That is how I have always practiced," or "I always use four way meetings." A four way meeting in a collaborative case and a four way meeting in a traditional case are very different processes. As we develop a new definition of advocacy, the structure of the four way meeting changes to accommodate this new advocacy. The lawyers step aside from the role of negotiating between themselves and "selling" a settlement to their clients, and move to a supportive and facilitative role. In order to do this, it is necessary to have built our relationship with our client outside of the four way meetings, so that our client is sufficiently prepared to be able to negotiate within the four way meeting by speaking for himself. In order for this to happen, we also need to have prepared with the other lawyer. Since the two lawyers will be co-managing the four way meeting, it is imperative that they have done enough of the ground work prior to the four way meeting to co-manage the meeting successfully.

One of the delights of this work is that we are not out there alone. As colleagues, we can work together in the four-way meetings to help maintain a safe environment for our clients to work together towards resolution. One of the aspects of collaborative cases that help move clients towards success is that we do not have to solve all of the issues between the spouses all at once. Gone are the days of trying to build an interim bridge that the parties have to live with until trial, with the perils of prejudicial status quo. We can instead solve things in bite-sized pieces. We even have the luxury of trying out each bite to see how it works. I like to think of this aspect of the settlement process as laying out the paving stones towards full resolution. Each time we come to some agreement, even if small and temporary, it is another paving stone. We may not know where the path is going and may even go back and reposition some of the early paving stones, but each time we lay one we move closer to success.

Four way meetings are a bit like jazz improvisation. The skills, diligent work and knowledge that have taken place outside of the four way meeting come together within the four way meetings. There will be times when this will be melodic and times when it will feel more like chaos. A client recently described collaborative process to me like this: "It's like the water going around and around the drain," she said "and it just keeps going around and around, and you start to feel like it will never go down when suddenly, 'Swoosh,' and you're done."

Managing the four-way meetings gives the lawyers an opportunity to model many of the behaviours that our clients are also striving for: respectful communication, empathic listening, and honest communication. The clients we work with have never been through this before and are expecting the lawyers to provide guidance and support. Being well prepared for the four-way meeting is imperative. Preparation for the four-way includes having done any necessary homework with the client, preparing the agenda for the meeting with other lawyer, and making certain that the client is prepared for the meeting. It also includes having properly prepared with the other lawyer, particularly when the four-way meeting is anticipated to be difficult. These are all things that are best not ignored or done on the fly. In an adversarial practice, we can prepare for court the

night before. In a collaborative practice, we do not have the same freedom since most of the preparatory work involves the input of others.

Identifying when independent, objective criteria are needed: building collaborative process to gather this

As an advocate, part of my work is to identify those aspects of the issues that need more information. It may be that my client in the four-way meeting agrees with her spouse's assessment of the value of an asset, yet privately she lets me know that she has questions about the value.

In the adversarial model, expert's opinion on an issue can become a central battleground. As an advocate in the adversarial process we often choose to build or strengthen by obtaining expert opinions. In collaborative process, expert opinion takes on a supporting role. The lawyers and any other professionals in the collaborative team, along with the clients bring their skills together to first resolve the assumptions to be made in the collection of objective information. For example, what assumptions will be used in valuing a pension? Should a range of assumptions be used, and the parties then use the range to work towards settlement, or do the parties want to work on narrowing the range beforehand by narrowing the assumptions? My advocacy role is to explore these options with my client, and help her assess what process will lead most effectively towards the goal of mutually acceptable solution.

Don't Become the Problem

I recently heard a story from a collaborative colleague. She was talking on the phone to another collaborative lawyer, and after hanging up she found herself taken aback by his attitude and demeanour on the phone, which she was surprised to find antagonistic. Shortly after they hung up, he called her back to apologize. "I just got out of court," he said by way of explanation, "and my adrenaline hadn't settled down yet."

Although I have never been articulate or self-effacing enough to vocalize such an apology, I have certainly been keenly aware of the boundaries I stumble over, dragged by the currents of adversarial adrenaline. I would often watch myself with despair as I ran into the adversarial forum with my self-righteousness completing obscuring not only my compassion but even my basic manners.

I would like to say that collaborative practice has healed all that, but I would be lying. I still find myself reactionary, self-righteous, and contemptuous at times. Sometimes I think I know more than everyone else in the room, and sometimes I think that I am the dumbest one in the room and I better keep my mouth shut or I will expose my stupidity.

What I am learning, slowly, is to recognize when I am the problem, and to attempt to do something about it. This is something that I have never seen directly addressed in the conferences or literature around adversarial practice. The closest recognition of this within the adversarial mainstream is discussion around collegial courtesy. That is a starting point, but I am speaking about much more than that. I believe we can all easily identify when the other lawyer becomes the problem. The piece of advocacy that I am speaking of here is recognizing that in ourselves and checking or de-escalating those

behaviours in ourselves as they arise. I now give myself permission to ask to take a break if I see that I need to step outside the room to regain my patience, or to let go of a projection that has gripped me.

It is easy to criticize this part of advocacy, as it runs contrary to the myth that in adversarial practice we are 100% professional 100% of the time. We aren't. This is part of the human condition. To begin to recognize and work around this is to begin to move from being part of the problem to part of the solution.

Role as advocate in a self-determination model

As we do more of this work, we will have the occasion when a client tells us that he is willing to leave a piece of his financial entitlement on the table. In the adversarial model, this is a sign of weakness, and as a skilled advocate, this is something we are trained not to condone. "At the very least," our adversarial education tells us, "hold this in your back pocket and use it as a bargaining chip."

At its heart, collaborative practice is a self-determination model. I know what pieces of my life I hold more dearly than money. I know that these pieces are many: my children, my family, my health, my emotional well being, my peace of mind and contentment. I would not trade the time I make for contemplation for money. I would not sell my joy for any amount of money.

If I am truly advocating for my client's right for informed self-determination, I am not in a position (assuming that I am satisfied that the decision has been made from informed self-determination) to tell him he can't make the deal he has decided to make. How we handle this depends on our comfort level. I have had colleagues suggest that they would write a cover-my-ass letter in order to confirm with their client that they have advised him about what he is leaving on the table. I am sure that this is comforting practice and, for insurance purposes, makes good legal sense.

If I have done my job as advocate well from start to finish, including the necessary attention to process, I will have a relationship with my client that is sufficiently honest that I can rely upon his ability to make a decision that meets his highest prioritized needs. This does not necessarily mean getting the most money, which has been a measure of success we have been comfortable using. The skill that I bring to the new advocacy is what I use to build my comfort level in assisting clients to put together a resolution that will truly work for them into the future on all levels. In the transition from litigators to collaborative lawyers, we have much to unlearn. The way we define ourselves changes. How we do our task changes. And the shape of our practice will change. Among all the changes we will experience, perhaps the most difficult is giving up control. We give up control over outcome, and over the ultimate decision our client will make.

I recently had a colleague, new to collaborative law say to me, "This is so much harder than litigating." I had another collaborative colleague, who was negotiating the end of a very difficult collaborative case, say, "I just find that I don't have the patience I need for this work." Finding the arc of the new advocacy is not easy, and the sign posts are not lit in neon. We are a profession with a powerful collective ego, which has at times powered the engine of great social change through the adversarial process. As we move into the new advocacy, it is not ego, but humility that we strive for. It is an extraordinary

gift to be invited into the intimate heart of private conversations, and to be asked to assist at a most difficult transition.

A New Definition of Advocacy

Having begun with a new definition of successful outcome, can we build upon this to re-define client advocacy in a self-determination model? I would suggest the following as a starting point for our re-definition of advocacy.

To honour client process choices and agreed upon values while:

- Being steadfast in providing comprehensive support to the client,
- Assisting the client to understand and articulate his short and long-term interests and goals, and
- Offering the necessary support and leadership to enable her to resolve disputes.