

COLLABORATIVE PRACTICE Toronto

Featured Article

My dream divorce

A growing number of couples -- and lawyers -- are deciding to do divorce differently

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The Ottawa Citizen
Saturday, February 16, 2008**

For years before his 1987 divorce, Mike Brown was a drinker -- a bad drinker who could flip from popular jokester to angry bully in less time than it takes to down a beer.

Even so, his wife Megan loved him, his big heart, his friendship and his wacky sense of humour. But after a few years, even those lovable traits weren't enough. Megan, who had a daughter with Mike and another from her first marriage, asked for a divorce.

"When you're trying to have a career, raise your children and deal with all that," the 53-year-old Halifax woman recalls, "you get to a point where you think, 'I can't do this anymore.'"

By anyone's reckoning, their split should have ended in a painful, brawling divorce.

Incredibly -- no, miraculously -- it didn't. Each of them had experienced painful divorces before their own, so Megan and Mike were determined that this relationship would not ruin their family. The couple threw societal expectations out the window and did their divorce differently: They lived together as roommates in a three-bedroom townhouse in Calgary, so together they could raise their daughter Bethan. What's more, the parenting partners -- for lack of a better term -- weathered stranger waters still when Megan fell in love with and married Mike's brother Bill 12 years later.

Throughout it all, the former couple maintained just one focus.

"Mike and I were totally committed to our child. It was our number one priority," says Megan. "We'd both been through bad divorces. From those experiences, we learned what we didn't want. And we didn't want our daughter to suffer."

Noble sentiments indeed, but the Megan and Mike Brown story is far from isolated. According to *Reconcilable Differences* (Second Story Press), a new book by Cate Cochran, a producer on CBC Radio's Sunday Edition, more and more of the 38 per cent of Canadians who go their separate ways are fighting the urge to fight it out to the bitter end. Instead they're choosing to craft their own -- and often unconventional -- arrangements.

Other times they work through Collaborative Family Law, a rapidly expanding program in family law practice introduced to Ottawa in 2002 that neither bleeds couples financially nor leaves children caught like deer in traffic.

"The marriage, the romance may end, but the family doesn't," says the 52-year-old Cochran, a veteran of her own remarkable divorced-but-cohabiting arrangement. "It's incumbent on us to build a strong family even if it's shaped differently."

How different is different? Plenty. One couple Cochran interviewed decided to stay in the family home; the husband just shifted to the attached granny flat. He supported them financially and, after the children moved out, the pair sold the house and went their separate ways.

An Ottawa man who came out as gay to his wife after nearly a decade of marriage simply moved into a downstairs bedroom. Although the wife was initially devastated, they now celebrate the anniversary of their divorce every year.

Shortly after Cochran's marriage ended, she and her ex bought a four-plex in Toronto, rented out two units and moved into the other two.

Their children ranged freely from one unit to the other while Cochran and her ex spoke daily, often sitting on the stairs between their apartments to discuss school projects, parenting and meal schedules.

Given the emotional maelstrom that accompanies failed relationships -- hurt, guilt, grief, vindictiveness, remorse and anger -- divorces that move beyond amicable into happily-ever-after seem impossibly rare. Not so, says Cochran. With a shared agenda of maintaining financial stability and emotional integrity for the children, the "divorce dissenters" are stepping up to the challenge of good marriage. You have to be respectful of each other," says Cochran. "You have to make compromises."

Such notions are also at the heart of Collaborative Family Law. First developed by a group of lawyers in Minnesota, CFL lawyers are specially trained to tackle separation and divorce from a compassionate and co-operative angle.

They meet with separated spouses to define and negotiate issues in a respectful, controlled environment.

Collaborative Practice Toronto

"Every CFL case starts with an agreement," says Anne Moxley, a CFL lawyer in rural Ottawa who limited her practice to out-of-court, negotiated settlements more than a decade ago after witnessing the devastation caused by standard divorce procedures. "It sets out the rules of the game, and that means civility as well as procedure. The lawyers agree they won't take it to court later, disclosure of assets doesn't become a digging expedition. Basically, we're trying to keep things on the rails, moving forward and building up rather than tearing down."

Along with the agreement, lawyers can bring in social workers, psychologists and financial planners to help coach the divorcing couple on everything from their RRSPs to the children's psychological well-being.

"When you split up, it can be hard to see where things are going," says Moxley. "If you have a financial specialist come in with a spreadsheet and explain where you are going to be in 20 years, it takes the fear out of it. It's not a dissolution of a family, it's a restructuring of it."

So far, it's working. According to Heidi Ruppert, a CFL specialist at the Ottawa law firm MDR Associates, the focus on negotiation and communication has turned potentially acrimonious divorces into speaking-terms arrangements.

"I had one client support the spouse through rehab, not pulling any moves, so they could work toward 50-50 parenting," she says. "Some clients live in the same neighbourhood so the kids are close. Many couples initially have a bird's nest arrangement (in which parents, not children, move in and out during access weeks). The key ingredient?

People have to really get a grip on their pain. They have to have the patience, too, to understand that the party being left needs some time to catch up emotionally."

For Megan, Mike and others forging their own path, lawyers are not always necessary. Although the couple briefly consulted a paralegal, "we did everything ourselves," she recalls. "It was a dream divorce, if such a thing is possible. We put the issues we had between us to one side."

One motivation was avoiding the kind of messy split Mike experienced with his first wife; the Browns say they spent \$25,000 attempting to gain access to Mike's young son. "But his divorce is the norm," Megan says. "So I'm a little jaded with the whole court system."

The one thing she isn't cynical about is her own split. After the couple decided to end their relationship, Mike left Calgary for Nova Scotia to help him recover emotionally from the split. But when Megan found a good job 18 months later that involved travel, she made him an offer

"I knew how much he missed our daughter," Megan recalls. "So I said, 'Have you thought about returning?' He moved back within three weeks."

Although his presence in Megan's spare room was theoretically temporary, the former couple quickly fell into a routine that even involved Mike moving with the family when Megan took a job in Saskatoon. Strangely enough, although his drinking and depression were still an issue, Mike respected the new dynamic and would stay at a friend's house if he had been drinking or was depressed.

"Your expectations change along with the circumstances of your relationship," Megan says. "I had a more realistic view of what he was capable of and he felt the same way about me. I had no expectation that he would look after my needs; that wasn't his job anymore. But I did have expectations of him as a roommate that he met and exceeded."

Years later, when Mike's brother Bill showed up one night after driving stexpanded. Megan would stay up late listening to Bill's problems and discussing life. Eventually, they fell in love, married in 1999 and now live in Halifax.

"This whole thing has made me a better person," Megan says of her friendship with Mike, who still lives out West. "I'm really proud of the relationship I have with him, and how we took something so cruel and did things differently."

But is society ready for dream divorces?

It depends on whom you ask.

"Definitely, there is exponential expansion in this area," says Moxley.

"Clients are looking for it. People are looking for a better way to move on." On the other hand, divorcing co-operatively puzzled many of Cochran's friends.

"People think you're either foolish or naïve," she says. "There were skeptics who assumed that one of us was being fooled. Or they'd be perplexed. We didn't have the answers, there was no model, so we didn't know what we were facing. It was literally feeling our way along the walls of a dark room."

Cochran says the concept of a happy divorce troubled some, but many more were confused by how she and her ex developed a more honest, communicative and co-operative relationship than when they were together.

"People have asked us why we didn't just stay married, even though it wasn't working on other levels," Cochran admits. "It was unorthodox, but it made sense to us."

Whether or not such queries are the result of our Noah's Ark society that only understands relationships in pairs, Cochran says the key was to trust her instincts. "You

conferred and trusted each other, and you adapted as you went along. We had friends who had an incredible food fight of a divorce and we knew that's not what we wanted for ourselves."

Recently, Cochran's 19-year-old son left home for the first time. "I asked him about his childhood, five years of which was with this arrangement. He just said to me, 'Mom, it was a really happy childhood.'

If we can give our children just that," she says, "then it's worth every moment of struggle."

Julie Beun-Chown is a national magazine writer living in Ottawa.

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HOW TO HAVE A DREAM DIVORCE

1. "Sit at the kitchen table and talk about what matters most, which for most people is the happiness and stability of the new family structure,"

says Cate Cochran, author of the new book *Reconcilable Differences*.

"Talk about what you can and can't do. Craft an arrangement that you can live with and never mind what the rest of the world thinks about it."

2. Get good advice on financial issues, which can be very complicated depending on your circumstances.

3. Show some respect. "You can't belittle or degrade the other person,"

Cochran says. "Don't fight in front of the kids or drag them into disagreements. We all slip and let our anger take hold, but you have to learn to apologize and start over."

4. Create an equitable schedule and division of financial responsibilities. "You have to figure out who's going to pay for things like skating lessons. It's pretty basic stuff. Draw up a list and keep talking to each other. Negotiate. The same goes for a work schedule and time off. We both had long-distance relationships, so we needed weekends off and we had to work around that."