

---

# The Essential Nature of a Collaborative Practice Group for Successful Collaborative Lawyers

Pauline Collins and Marilyn Scott\*

---

*The important need for a strong collaborative practice group in order for collaborative practitioners to operate successfully is often not fully acknowledged. A research project undertaken to examine the delivery of Collaborative Practice (CP) services in family law by the authors identified the various roles for collaborative practice groups and the support they offer practitioners. The research took an exploratory approach, investigating the experiences of private CP service providers in a major regional city in South West Queensland and in metropolitan Sydney, New South Wales. The research found that the role of the practice group was an essential aspect for maintaining and developing the professional learning community that is integral to a thriving community of collaborative practitioners.*

## INTRODUCTION

### Collaborative Practice Groups in Australia

Collaborative law was originally based on the idea of both clients and their lawyers adopting a business meeting format in a series of meetings to discuss and negotiate all issues in their family law matters. These meetings, often called four-way meetings, replaced the traditional lawyer-lawyer negotiation model, encouraged full client participation in the decision making and drew heavily upon the essential communications skills commonly used by mediators.

Collaborative Practice (CP), as it is now more commonly called, added to the core group of two clients and their lawyers the services of allied professionals, such as financial specialists and child and relationship specialists, to form a multi-disciplinary, or sometimes interdisciplinary, approach to dealing with all of the clients' issues, with a view to reaching settlement on legal, financial, child and relationship issues.

For CP the evidence base for reviewing the workings of practice groups is scant. Whilst there is some data and information pertaining to various projects in Canada, the United Kingdom, United States and Ireland, there is little published research that pertains to the unique aspects of the Australian Family Law system.

This comparative study of two practice groups, one from an inner city metropolitan area and the other from a regional city in another state in Australia affords an ideal opportunity to expand the evidence base on CP, particularly as it pertains to the Australian setting. This article reports some of the data from the research that focuses on the vital role of practice groups in supporting and educating lawyers and allied professionals in developing expertise in and providing an holistic legal, financial and relational process that engages parties in reaching their own agreement without the need to go to court as litigants.<sup>1</sup>

---

\* Pauline Collins, Associate Professor, School of Law and Justice, University of Southern Queensland. Marilyn Scott, Senior Lecturer, Faculty of Law, University of Technology Sydney. This article is based on a presentation given by the authors at the National Mediation Conference, Gold Coast, 15 September 2016.

<sup>1</sup> Family Court of Australia, *Reaching an Agreement without Going to Court*, Family Court of Australia (3 May 2016) <<http://www.familycourt.gov.au/wps/wcm/connect/fcoaweb/family-law-matters/family-dispute-resolution>>: "Where possible, you should seek legal advice before deciding what the best option for your dispute is. A lawyer will be able to help you understand your rights and responsibilities and can explain the law that applies to your case. They can also help you and your former partner reach an agreement without needing to come to court."

## RESEARCH PROJECT DESIGN

As family law is a national jurisdiction, two practice groups, one in a regional city and another in an inner metropolitan area in a different state, were selected for this study to examine whether or not there were any significant differences in their experiences, achievements and challenges as they set up and nurtured their practice groups. Ethical clearance was provided by both researchers' universities, prior to undertaking the research, and all sixteen participants voluntarily consented to be involved in the research.

The study examined the perceived value, or otherwise, of the practice group to develop and promote CP. It explored whether there were any observed changes to the client-professional and professional-professional relationships, and any important changes that may have impacted on the practitioners working in the context of these new multi-disciplinary or inter-disciplinary processes.

The study also examined whether the settlement outcomes and their durability were comparable to that of curial judgments, and what, in the participants' views, was working well. Any challenges they were experiencing in establishing CP as a next generation dispute resolution process that sits with the more familiar processes of family dispute resolution, mediation and Legally Assisted Family Dispute Resolution (LAFDR) in the Family Law system were also recorded.

A qualitative research method using an exploratory approach was followed. This approach permits comparison of participant's data, to determine what is happening for the person in their domain and to draw possible conclusions rather than testing a specific hypothesis. It fosters further research in specific areas identified through the exploratory data collection.

Data was collected through a series of focus groups for which sample questions were provided in advance to the participants. This enabled the practice group members the opportunity to discuss the focus group questions beforehand. The focus group sessions were for one hour and were incorporated into the regular, scheduled practice groups meetings and were conducted in the meeting rooms of the practitioners' firms. All participants were collaboratively trained practitioners. The focus group facilitation was standardised so that there was no influence from the facilitators. Each participant in the focus group was coded for anonymity. The transcribed data was then mined by the researchers to identify common themes and issues.

The methodology and the review of the data adopted qualitative research principles including reflexivity and consideration of human behaviour in a contextualised approach. The study is limited by the small number of participants. However, the exploratory qualitative data provides useful insights into the current practice experience of collaborative practitioners working in family law within two locations in Australia.

## HISTORICAL FRAMEWORK FOR PRACTICE GROUPS

As Stu Webb<sup>2</sup> and other pioneers, especially those in California, developed their own practices of collaborative law they were invited into communities to provide training in this emerging practice. Once trained, the practitioners usually formed groups to support their development and promotion of this practice approach. These groups became known as "practice groups" and "became a critical building block in the growth of the collaborative movement".<sup>3</sup> As Webb and Ousky confirm, from the commencement of these groups there was a culture of freely sharing all ideas, documents, practice tips and encouragement for practitioners to learn about and engage in collaborative practice.<sup>4</sup> It is this community education approach and group format that has generally been adopted in all countries

---

<sup>2</sup> S Webb and R Ousky, "History and Development of Collaborative Practice" (2011) 49 *Family Court Review* 213, 216.

<sup>3</sup> M Sefton, "Collaborative Law in England and Wales: Early Findings: A Research Report for Resolution" (2009) 10–13 cited in J Lande "An Empirical Analysis of Collaborative Practice" (2011) 49 *Family Court Review* 257. In the United Kingdom practice groups were known as "PODs" (Practice and Organisational Development Group).

<sup>4</sup> Webb and Ousky, n 2, 216.

where CP has taken root.<sup>5</sup> This has ensured that there has always been a strong emphasis on professional learning, skills development and knowledge exchange in the practice groups.

The development of the practice groups in Australia has largely arisen out of shared training experiences with recognised trainers. Over time, these training experiences have become more varied as local trainers have replaced the original trainers who came, from Canada, California and Texas. With the diluting of uniformity of training, and training taking place over more than a decade, several effects on the practice groups are predictable. Firstly, there are obviously differences in training materials and approaches with some practice group members being trained in a lawyer-centric model of collaborative law, whilst others in the same practice group may have received training from an exponent of an interdisciplinary approach, of which there are a number of different approaches.<sup>6</sup> Thus, in any one practice group there may be differences in the model learned. Secondly, not all of the members may have been taught at one time, so there will be a range of experience and levels of competence between the newly trained and those who were trained in the early years and who have since completed large numbers of matters.

These two variations add to the complexity of the task for the practice groups to provide tailored education for these professional learning communities. The variations will ensure that there is continuing development of ideas and practice approaches in vibrant communities. Also, as the practitioners who had received earlier training became more experienced and confident with their process competence, there is a wider acceptance of “allied professional inclusive” practice groups. Such groups are open to all interested trained professionals, rather than maintaining the lawyer only practice groups that occurred in the early years. The latter was often a consequence of there being no trained allied professionals locally, or because the lawyers preferred taking a staged approach to their development as collaborative practitioners. This involved collaborative lawyers first, making the paradigm shift from lawyer focused to client centred practice, then moving to become collaborative practitioners as they gained experience in multi-disciplinary and inter-disciplinary processes and became more comfortable working with other professionals in a joint project. As Healy<sup>7</sup> acknowledges it is the holistic approach to working with the clients during their critical separating period so they can build a functioning post-separation relationship, which is a distinguishing factor of the collaborative process:

[I]t is the first process within a legal framework to acknowledge the need for a more holistic approach to conflict resolution...it offers separating parties the opportunity jointly to engage additional experts who are specifically trained to work with the legal framework of the process; experts that may add value to the overall settlement achieved in terms of the parties' ability to rebuild a different relationship post separation or divorce.<sup>8</sup>

Not only were the practice groups the focus of each local CP community they were also the nodes in the state, national and international networks that developed. As Banks<sup>9</sup> states: “[c]ollaborative practice groups emerge locally, most often with geographical roots, and then flower into larger aggregations as county, state, and international organisations”.<sup>10</sup> Webb and Ousky report the early recognition of the need for a larger organisation “to facilitate the dialogue and sharing of ideas among the growing number of collaborative professionals and practice groups”.<sup>11</sup>

---

<sup>5</sup> C Healy, “Dispute Resolution through Collaborative Practice: A Comparative Analysis” (2015) 27 *Child and Family Law Quarterly* 173, 178.

<sup>6</sup> See, eg, Marion Korn, Canada, introduced a lawyer-centric approach with referral to other professions as required; Pauline Tesler, California, introduced an interdisciplinary team approach; Linda Solomon, Texas, introduced the single coach neutral approach. All of these approaches have informed the development of CP in Australia.

<sup>7</sup> Healy, n 5.

<sup>8</sup> Healy, n 5, 190.

<sup>9</sup> L Banks et al, “Hunter-Gatherer Collaborative Practice” (2011) 49 *Family Court Review* 249.

<sup>10</sup> Banks et al, n 9, 249.

<sup>11</sup> Webb and Ousky, n 2, 216

In 1997 the American Institute of Collaborative Professionals (AICP) addressed this need in the USA. However, by 2001, internationalisation of CP had occurred and the AICP became the International Academy of Collaborative Professionals (IACP).<sup>12</sup> This academy supported the growth and development of CP and the practice groups by creating standards for practitioners and trainers; promulgating ethical standards; providing resources for public education; supporting excellence in practice through resources, training curriculum, practice tools and mentoring; and assisting the practice groups to continue the tradition of sharing and learning from one another.<sup>13</sup>

Similar networks occurred in England, Ireland and Australia. In 2003 the first training took place in England and the practice was supported initially by the Solicitors Family Law Association, later renamed as Resolution.<sup>14</sup> Interestingly the nationwide family lawyer membership of Resolution<sup>15</sup> gave one of the only examples of formal umbrella organisational support. This support appears to have accelerated the entrance of CP into mainstream family law practice in the UK.<sup>16</sup> Whilst in Ireland the umbrella organisation, the Association of Collaborative Practitioners (ACP), followed the first training in 2004. In Australia practice groups arose from the first training in 2005. These were situated in Canberra, Sydney and the Southern Highlands, New South Wales, and Sunshine Coast, Queensland. From these and other practice groups arose umbrella organisations in the ACT, New South Wales, Queensland, Victoria, Western Australia and South Australia. A national association is proposed, with steps taken in 2015 to establish an Australian Association of Collaborative Professionals.

### Professional Learning Communities

Sandeen,<sup>17</sup> writing in the context of outcomes-based education in law schools, provides a useful discussion about Professional Learning Communities which informs this study of the functioning of the practice groups that are characteristic of the CP movement. Firstly, Sandeen adopts Angelo's<sup>18</sup> description, which is applicable in the context of this article, of how a Professional Learning Community works:

Learning communities work collaboratively toward shared, significant academic goals in environments in which competition...is...de-emphasized...[E]veryone has both the opportunity and the responsibility to learn from and help teach everyone else.

Secondly, it is Sandeen's outline of the six characteristics of a successful Professional Learning Community that articulates the aspirational framework for practice groups as:

1. Shared mission, vision, values, and goals;
2. A collaborative culture with a focus on learning;
3. Collective inquiry into best practices and current reality;
4. An action orientation based upon principles of learning by doing;
5. A commitment to continuous improvement; and
6. Results orientation.<sup>19</sup>

---

<sup>12</sup> Webb and Ousky, n 2, 216; see also, International Academy of Collaborative Professionals Website, *Collaborative Practice*, <<https://www.collaborativepractice.com>>.

<sup>13</sup> Webb and Ousky, n 2, 216.

<sup>14</sup> Healy, n 5, 178.

<sup>15</sup> Healy, n 5, 178: Resolution had specific eligibility rules for practising Collaborative Law in UK: as well as three years of legal experience, specialist practice requirements and completion of recognised collaborative law training, members had to belong to a local practice group, attend at least two meetings per year and undertake at least six hours of "approved collaborative related continuing professional development" in their second year.

<sup>16</sup> Sefton, n 3, 1.

<sup>17</sup> SK Sandeen, "Professional Learning Communities and Collaborative Teams: Tools To Jump-Start the Learning Outcomes Assessment Process" (2013) 6 *North Eastern University Law Journal* 189, 190.

<sup>18</sup> Sandeen, n 17, 213 quoting TA Angelo, "Seven Powerful Shifts and Seven Powerful Levers, Developing More Productive Learning Communities" (1996) 6 *National Teaching and Learning Forum* 1.

<sup>19</sup> Sandeen, n 17, 214 referencing R DuFour, et al, *Revisiting Professional Learning Communities: New Insights for Improving Schools* (Solution Tree, 2008) 15–17.

## RESEARCH FINDINGS AND DISCUSSION

The overriding findings in relation to practice groups included the essential importance of the practice group in forming professional learning communities.<sup>20</sup> This enabled consolidated basic training and facilitated ongoing and advanced professional and cross-disciplinary learning. The practice groups provide a structure for deeper development of trusting professional relationships by providing mentoring and support amongst the members as they educate themselves.

### Professional Learning Community

The functions of the practice group are many faceted, because not only do they sustain the practitioners through their transitioning from being competent traditional practitioners to being equally competent collaborative professionals, they also provide the structure in which this learning and professional development occurs: “[it is] the structure and place for continued learning and training, which I think is very beneficial for all” [A1].<sup>21</sup>

One participant gave a very comprehensive summary of the group as a learning community:

The...main benefit is community building, which is the cornerstone of collaborative practice, but more than that, [it is] the opportunity for professional growth and professional learning and the ability to extend the way you think and [the way] you apply your traditional knowledge to the process... that requires continual engagement in your own education and professional development and unless you are working with other people you are not going to pursue that type of education yourself. [B7]

There is also recognition that the practice group functions as a discrete professional learning community that responds to the individual needs of each specific cohort: “we need to build a practice group that reflects our needs as practitioners and is democratic...” [B2].

Importantly, the assessment of cohort learning needs is not static as the introduction of new members requires a reassessment about what further ongoing training and development they also require. It is suggested that this could be done through “a kind of...screening intake process for what ... these new guys [are] wanting and expecting...to meet their needs” [B3].

A suggestion to address further concerns about opportunities for upskilling new practitioners was offered by one practitioner who approved the extension of the co-operative learning experience from within the practice group meetings to within the practice group’s community:

I think it’s very important...to create those opportunities for learning by being generous enough to allow...a person to come in as an observer and to learn about the dynamics and the approach. [B2]

This observer-learner model has been previously well supported in the legal profession, particularly with the pupillage system for barristers and junior solicitors accompanying principals to court.

Some practice groups separate the administrative functions from the learning functions of the practice group to achieve positive outcomes:

We have established a management committee, so we have a representative from each office on the subcommittee and the management committee...they meet separately and get the majority of the admin tasks done, so by the time we get to the meeting, much more time and focus [is] on the training, which is what everybody wants. [A5]

There may be a program of regular training elements as well as a clinical setting for reflective practice and learning from the experiences of others:

We do a lot of training videos, but I think one of the most valuable things is talking through a collaboration you are involved with at the time or that you have experienced and why it hasn’t gone well [or] what has gone well about it. [A6]

This practice of supporting practitioners through difficult matters has been addressed by using experienced practitioners as mentors, or even having a mentoring committee, or using the practice

---

<sup>20</sup> Sandeen, n 17, 214.

<sup>21</sup> Direct quotes from the study participants included in this article are coded alphanumerically to maintain participant anonymity.

group meeting as a clinic:

[W]e try and have time in the meetings where we can just talk about how we are dealing with them as they are going and what we are finding useful and that kind of thing. [A4]

### **Supporting Paradigm Shifting: From Solo Practitioner to Holistic Practitioner**

The challenges of transitioning from traditional practice to CP and the central role of the practice group to facilitate this transition was identified by the participants:

I think it's working with that core group, so that we all have the right mindset - that if we are going down this pathway we are shedding all those traditional practices and just being all on the same page...[B5]

Another important function of the practice group is to facilitate transdisciplinary and multidisciplinary knowledge and skills. In relation to the latter, one participant acknowledged the need to know more about the different disciplines:

My experience has been that there is still a lot we could do to learn about what exactly each other does or can contribute...and...getting those barriers down rather than being in silos.[B3]

This transitioning also requires a significant amount of practical professional support for practitioners. As one participant confirmed:

To me the practice group is the major vehicle to create change and support for practitioners...we are all looking for both guidance and support around practical issues... and looking for guidance about how to actually roll out practice and make that happen every day. [B4]

### **Working in Teams**

One of the practical every day issues identified is how to effectively work within a team. This is quite a departure from the solo performance usually attributed to the legal representative. First, there is the issue of a process that requires both clients and their respective lawyers to be present for all meetings and negotiations in contrast to the at-arm's-length lawyer-to-lawyer negotiation, without the presence of clients, which dominates legal practice. The practice group supplies support for this on a number of levels. For one participant, it was about getting "a closer professional relationship with people [in the practice group]" A4. For another there was a sense of safety in working in the team where "permission was given to picking up on each other's mistakes" and having the opportunity to "really share" and "to feel safe in the team" [A6].

A further aspect of team work to be learned by practice group members was in relation to the lawyers being able to "work together to keep the client on track" [A6]. This is a novel requirement that requires maintaining a careful balance between representing one's client as their legal advisor and working in a professionally cooperative, rather than competitive, process frame with the other lawyer.

### **Promoting a Co-operative Professional Legal Culture**

The importance of the professional relationships that are developed in the practice group is further augmented by the impact that these relationships have on non-collaborative practice matters:

I think one of the benefits of the practice group is the relationships you develop with the other practitioners which is so important, even if you then have to deal with them in a litigious matter there is still a different way of dealing with them, which makes our lives easier. [A5]

This development of more civility in general family law practice, particularly amongst collaborative practitioners, was perceived as a benefit to these lawyers. Membership of a practice group has the advantages of group identification, of "being known as one who wants to practice in that area...to keep up to date and to keep it alive" [A2].

### **The Critical Mass**

To be able to meet all of these learning and support functions practice groups usually require a critical mass of members, as one of the participants noted, it is "about getting the critical mass of trained practitioners across different sectors who are comfortable working together" B8. Another saw the value of a functional practice group was:

[T]o give you a chance to practice with other ones. To adapt and become flexible ... There are a lot of adjustments going on, I think, around your client-professional [relationship], to other members of the team adapting...There are many subtle layers of adaptation [taking place] [B7].

The practice groups also play a dynamic role in developing communities of collaborative professionals:

the group is everything...this monthly meeting...help sustain a commitment to cooperative bargaining through learning from the successes and learnings from others. [B2]

Sustaining and educating practitioners<sup>22</sup> is at the centre of the relationship between practice groups and the collaborative law community:

I think community after community, and not just in Australia but around the world, has experienced a similar evolution and that is, if you can't get the practice group right, there is no collaborative community. Sometimes they get off to a great start, sometimes they die and when they die, so does the community. So, it is all about the practice group. [B7]

That is:

it's about two things, community building...[and] it's also about being able to extend your practice through education. [B7]

## CONCLUSION

The outcomes reported here enable collaborative practitioners to better understand the complex learning processes that practice groups experience in becoming vibrant and viable professional learning communities, no matter whether they are situated in a regional city or a major metropolitan area. The results from this study confirmed that similar issues were experienced by both cohorts at the various stages in the establishment and conduct of their practice groups.

These findings may assist emergent and maturing practice groups to be heartened by the consistency of the evolutionary process and experiences needed for their members to make the complex and sophisticated paradigm shifts that collaborative practitioners are achieving. What is clear from the research is the essential nature of the practice group and the many supportive roles it plays. It is important that practice groups successfully mature and the cohorts of learned collaborative practitioners reach a critical mass, as they have done in the UK and USA.<sup>23</sup> This will ensure a greater cohesiveness and provide comprehensively trained practitioners for a more holistic dispute resolution process. It is essential in order to meet demands for conflict resolution approaches more suited to healing than divisiveness in family law matters.

The changing paradigm of lawyering means professional cultural changes that this trans-disciplinary approach to legal-problem solving entails requires ongoing support. That practice groups provide the structure for the sophisticated professionalisation of lawyers and allied professionals with transdisciplinary knowledge, skills and experience is supported by this study. Clearly, further research needs to be undertaken to ascertain what more can be done by practice groups, their state umbrella organisations and the newly establishing national association to consolidate the place of CP in the mainstream of the family law system.

---

<sup>22</sup> Banks et al, n 9, 252.

<sup>23</sup> Sefton, n 3, 3.