

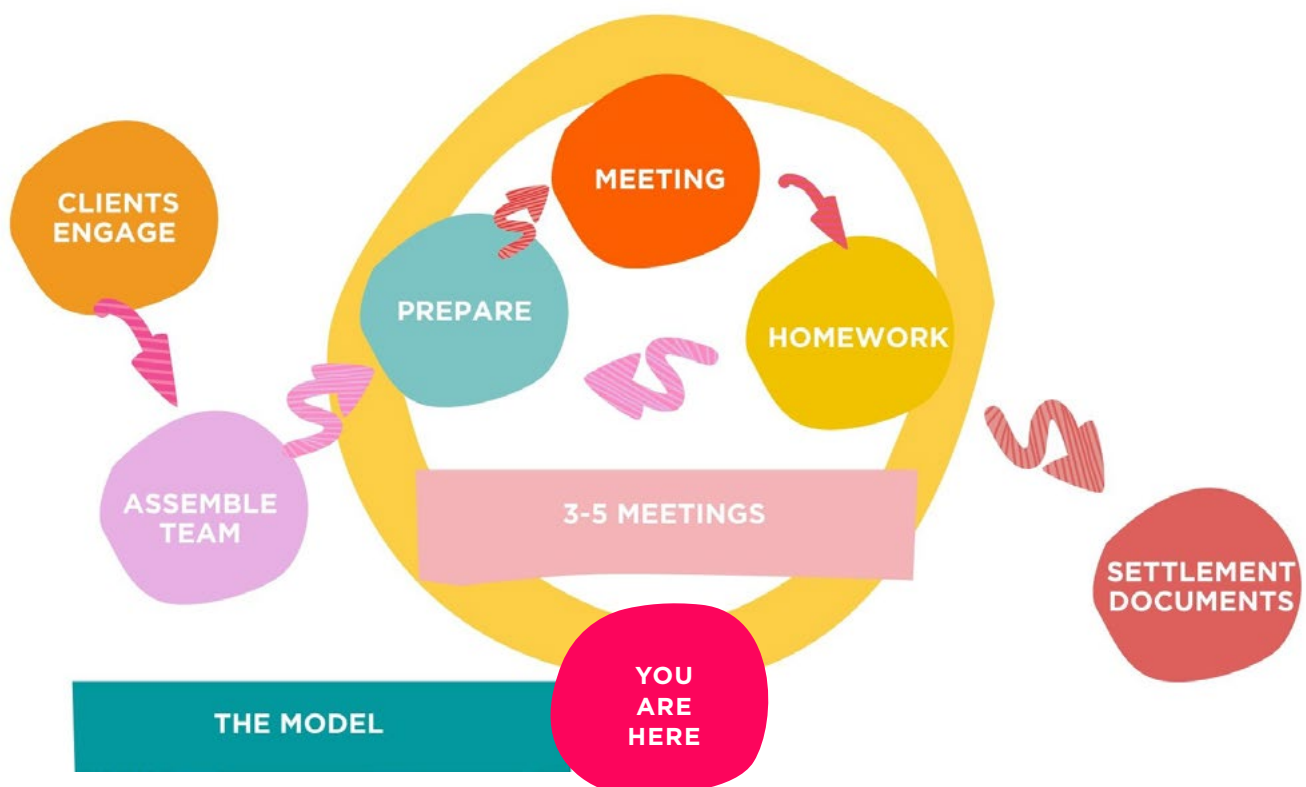
WEEK FIVE



Welcome to week five of our Collaborative Practice Program

You have made it to week five, which means there's only two more weeks to go and you will officially be able to call yourself a Collaborative Professional! This week we're going to be moving further forward in looking at the collaborative process and what happens after the first meeting, in subsequent meetings and ultimately how you can assist your clients to find a settlement.

Where are we in the process right now?



Last week you had the opportunity to have a go at a role play of an initial client meeting. In the lead up to now, we have looked at how you engage collaborative clients, engage your client's former spouse, build a team, and then prepare for and run the first collaborative meeting.

The next stage Additional Collaborative Meetings

There are many predictable steps that have taken us to where we are now, but the next part of the collaborative process is in some ways the hardest to predict. Every case is different and it is difficult to know how many meetings will be required between your team and your clients to help them find a resolution.

In my experience, a typical collaborative matter will take between three to five meetings to find a resolution.

I have however, had collaborative matters that have taken up to 15 meetings. Both matters that involved those large number of meetings involved significant asset pools and very complex business structures. And many meetings were used to ensure that our clients had the proper opportunity to consider the ins and outs of the different solutions that they were each proposing. On one hand, many meetings of course means more costs, but in both of those case examples, I can assure you that that cost was wisely spent. And for both families the cost was significantly less than what I would have estimated obtaining an outcome through litigation would have cost.

The second meeting and beyond

At the end of your first meeting, you should now have a clear understanding of the legal issues that your family need assistance with and a plan on the information that you need to gather to assist them to answer the questions and reach a settlement.

Pop Quiz! Using the facts from our pretend family, John + Judy, write down the steps you would need to take after your first meeting and the issues that might form the agenda for your second meeting.

Our Role play example and additional meetings

Let's take our pretend family, John and Judy. We know that they have both financial aspects and parenting matters that they would want to resolve. We can assume that there will be a need to obtain some information about the value of the assets that they each hold, some disclosure in terms of their income, perhaps some information around the inheritance that Judy has received. And it may be helpful to also look at the business that they have run their band through over a few years, just to check how that structure works and whether of course it has any value to either of them for the future.

If you have the benefit of a financial professional, in this case, the cashflow planning for both John and Judy into the future, will also be important. Looking at the practical realities of what their family needs and how they can maximise the financial resources between each of them will give them both the opportunity to think more clearly about how they might be able to move forward and support their children.

When it comes to the parenting aspects of their case, it might be helpful to have a deeper understanding of the children and their needs. This could be done through a child expert or simply done through spending more time with John and Judy and better understanding the life that they have in mind for their children.

You could imagine that between your first meeting and the second meeting, much of the financial information that's needed could be gathered and John and Judy could each work with a financial professional on building some cashflow planning and budgets for their future. Particularly given that at some stage, their living arrangements will need to be considered and part of what will inform the conversation about what to do with the whom will be the financial consequences of either party keeping it, the home being sold and the additional costs of rental properties and the like.

With their children, John and Judy might benefit from working separately with a child expert, or if you have the benefit of a coach, using the coach to help them negotiate short term and more longer term parenting plans. Again, this could occur separately between the coach/child expert and John and Judy, between the larger team meetings or with all professionals and clients present.

Always remember that the Collaborative process is bespoke and should be led by the wishes of John and Judy (or your clients in your process). It is important to always consult with your clients about how they would like to see things move forward, which pieces they do themselves, which pieces they do with the whole team and which pieces they do with their individual advisors.

Information and Data in meetings

At your second collaborative meeting, it is likely that there will be significant information that was not available at the first collaborative meeting. Often the second meeting is an opportunity to review that information. None of that information should be produced for the first time in that meeting and your clients should have been given access to any valuations, disclosure or further data that has been gathered prior to the second collaborative meeting. If that is not possible, I encourage you to consider postponing a collaborative meeting rather than using that valuable time to have people pouring over disclosure, such as bank statements, or trying to get their heads around complicated valuations. The beauty of the collaborative process is that you can do things slowly and carefully bringing people up to speed as necessary

The 4 step problem solving framework and your collaborative process

- 1 IDENTIFY THE PROBLEM**
'I want the house...'
- 2 Create a LONG list of the possible outcomes to solve the problem**
- 3 EVALUATE THOSE OPTIONS!**
A good old PRO's and CON's analysis
(use the goals and interests of the parties to balance the effectiveness of each of the options)
- 4 SETTLE ON YOUR SOLUTION**

Remember that hard work you did back in week 2 learning all about interest based negotiation and the problem solving framework that applies in Collaborative Practice- well now you really get to start to put that into action.

If you go back to our four steps of interest-based negotiation or what I like to call our four-stage problem solving framework, and apply that to the collaborative process as a whole, the first meeting was where we identified the issues/ problems to be solved and set out the goals of the parties that will frame a 'good' solution for them. In essence, in that first meeting we are tackling step 1 of the 4 step problem solving framework in that we are trying to get really clear on the problems we are helping our family solve.

Assuming that between the first and second collaborative meetings you have gathered all of the data that will ultimately be needed to help a family start to discuss their settlement discussions on their financial settlement or their parenting matters, the second meeting can start to move into what I would call a **brainstorming session**- in essence step 2 of our 4 stage problem solving framework. It may be that you need a series of meetings to gather and review the data your family will need- this is often the case with complex financial structures or with parenting matters that bring complexity also.

Last week we shared a Role Play video from our Sydney Collaborative Professionals (and John Thynne) showing how a team would prepare for this brainstorming session.



Brainstorming our way to a solution...

In this brainstorming session, we are starting to create a long list of possible outcomes that will ultimately help your family solve their legal problems. Put simply, I call this brainstorming, putting down all of the possible ideas, no matter how ridiculous, that may ultimately offer solutions to your clients. The more ideas you can get on the table, the better. At a minimum, you **must** have three.

Pop Quiz! Why must you have 3 or more options when solving any problem?

There will be some parts of the settlement that will either already be agreed or be known. But even if that is the case, I encourage you to put more and more ideas on the table. As impasses are reached in your matter, it will be the crazy, unusual or unexpected ideas that will unlock the solution on the whole deal. The advisors at the table need to be careful not to be discounting ideas before they've even reached the page. As crazy as it may seem, just write them down. Don't allow yourself to say, "Well, that won't work because, so we won't even think about it." Just put it on the table (or on the whiteboard!).

Whether this brainstorming activity occurs at the second or third meeting, or perhaps at meeting number 15, it is an activity that you will ultimately need to do once you have all of the data available. Once you have all of those options down on the table, remember that the third step of your problem solving framework is to start to do a pros and cons analysis of all the different ideas in a practical sense. And if we think about a property settlement or financial matter, often what happens is once all of the ideas are on the table, we encourage our clients to go away either with the assistance of the coach, the financial neutral, or their own lawyers, and come up with the settlements scenarios that they think could work. Encourage your clients to come up with 2 or 3 settlement options, not just one. If each of your clients comes up with three, you then end up with six, which is a good number, in my experience, for finding a resolution and avoids again the 'I win you lose' approach of just 1 settlement option each.

If you allow your clients to come up with only one option for settlement, you immediately have two positioned clients and are creating a win/loss framework. Try and avoid this as you move through the collaborative process, as it would be very difficult to find solutions when there is only his or hers proposals on the table. Sometimes the obvious settlement pathway just falls out of the brainstorming conversation and there might be one or two pieces that are the only things that really need some negotiation or discussion.

Pop Quiz! Using the role play facts from John and Judy, write down as many ideas as you can for the options they have to solve their financial settlement. And what about their parenting arrangements?

Often, it is agreed between a family that one might maintain a business and the other might be keeping a home, and the issue to be resolved might be 'what therefore is the cash payment that needs to be made?'. In the collaborative model, we also want to think about how that cash payment could be made and what is the impact of that payment on both parties.

There is no right or wrong way and again, every matter is different, but come back to your four stage problem solving framework and make sure that you have brainstormed

all of the possible options before you move to analysing them with your clients. How you do this will depend on the matter and the team members that you have involved. Some of that work will happen as a group in joint meetings. Much of that work will happen individually between advisors and your clients with either the assistance of your neutral financial or child experts or the benefit of a coach. Once that pros and cons analysis has been done, it's time to help your clients find a solution. And usually the answers start to drop out, or at least the issues narrow significantly.

And if a solution can't be found, remember you go back to the top of the four stage framework. Often now there'll be a new problem and it might be a narrowed problem.

For example, the scenario I gave before where it might be agreed that the husband is to retain the business and the wife is to retain the home. And the only question left to be answered is the quantum of any cash amount that needs to be paid. The problem is now shifted or narrowed and if you work your way back through the four-stage framework, that problem will now start to be solved.

Ultimately, collaborative practice is a legal process and you are trying to help your clients find agreements that will be binding at law. In my experience, the majority of the agreements we reach will be drafted into consent orders, parenting plans, and binding child support agreements. Sometimes however, agreements reached are creative or out of the box and binding financial agreements will be used to document them. Again, as a part of your collaborative process, you can discuss with your colleagues and your clients the advantages and disadvantages of the different settlement proposals that they are considering and how they might be documented in a legally binding way.

So Legal advice, when does that happen?

Legal advice will happen in your collaborative process all along the way. When it comes to legal advice and the collaborative process, it's not so much not giving it, but rather how you deliver it. That is the big difference between this and other legal processes it is how you deliver that advice.

Sometimes legal advice will be given privately with your client, sometimes in joint sessions with both parties. Often legal advice or information around possible outcomes can be an incredible tool in breaking impasses on different issues.

Don't shy away from giving legal advice to your clients as needed. The last thing you want is to get to the end of a collaborative process, half-negotiated an agreement and that be the first time that your client has heard anything about how the legal framework might apply to their process. Some clients seek certainty around a potential legal outcome early in their negotiations while others are happy to negotiate the terms of their settlement and then ask the question about how that settlement that they're considering might look if it was compared to their best or worst day at the end of a trial. This is an ongoing dialogue that you will have with your clients and will depend on their sophistication, understanding, comfort and confidence in the process.

If you are giving legal advice in joint sessions, think about the language that you use. Try and keep that language mutual and neutral. Try not to be condescending or rude to colleagues that may have different perspectives to you. Use those opportunities, where

different perspectives are being expressed, as an opportunity to reinforce that the family law system here in Australia is discretionary, and there are different perspectives on legal issues. And ultimately if you are before a court, there will always be some level of risk in terms of the likely outcome. This, ultimately, isn't a driver for why the clients that you were working with have chosen the process they have and is something that they should factor into their decision making also.

Pop Quiz! (For the Lawyers!) What changes will you need to make to how you offer advice during Collaborative Practice?

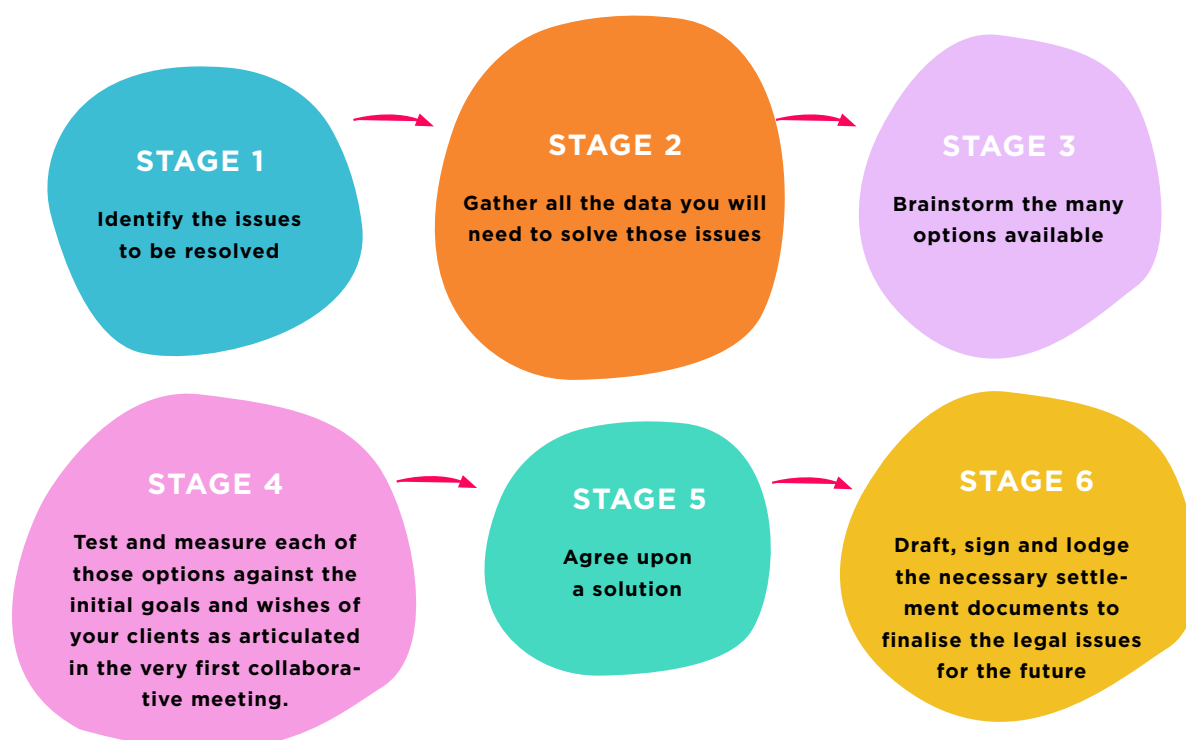
Pop Quiz! (For the Non-Lawyers!) What legal information would be helpful to you to better assist you clients in the Collaborative process?

Legal information vs Legal advice

Legal Information is regularly given early, during, and at the end of collaborative matters. For the lawyers, this will be the case in your client matters generally. It is helpful to explain why lawyers are focused on obtaining certain information or seeking that steps occur. This will be because we are aware of the legal framework or legal process, whereas our clients may not be. A good example of this is the process of disclosure. Disclosure should be an exercise in clarifying data and information to enable you and your clients to ultimately find resolution on the legal issues in your case. It should not be a fishing exercise for the sake of it, but we all know in practice at times it is. When it comes to discussing with your clients why it is that you're seeking copies of tax returns, bank statements and information about their businesses, it's very helpful to be able to say that this is part of the requirements of the legal framework that we need to verify this information and better understand it to ensure that the decisions people are making are the best decisions in the circumstances.

When it comes to legal advice and legal information, having tools, brochures, infographics, and other ways of sharing that information with your clients could be really helpful, both at the beginning of any matter, but during it also. This applies both in collaborative practice, but in all of your family matters generally. Pitch your advice at a level and with language that's appropriate for the clients that you're working with. And be guided by them in terms of the level and detail of any advice that they may seek coupled with of course, your own professional requirements, ethical requirements, and risk management strategies that exist within your firms.

So that's sort of it! I am not sure this week's reading helps answer the question of 'How many meetings will there be' but I don't think you can answer that question until you get started. So rather than talking in numbers of meetings, I encourage you to consider stages of the process-



When it comes to the collaborative process beyond the first meeting,
my key learnings are...



**...and we're done!
See you next Friday
Submit your work-
book to go into the
Prize draw!**