

COLLABORATIVE PRACTICE “ON TRIAL”

Florence, March 18, 2016

CLOSING ARGUMENT OF DEFENCE, ATTORNEY CARLA MARCUCCI, as

President of AIADC

I hope that through the initial declaration and examination of the witnesses, I have managed to demonstrate how different Collaborative Practice is from other ways of dealing with and resolving disputes, and in particular how this approach is different from traditional negotiations.

In short, I hope that I have answered the objection put forward by the prosecution and many colleagues specialised in family law who think they’ve been doing what we’re proposing as an innovative approach for years.

Instead, with this final conclusion I’d like to respond to an even more fundamental question that people getting set to deal with a family conflict, for example a separation or a divorce, quite rightly ask themselves.

Why on earth, and how, could I collaborate with the person I no longer want anything more to do with, who I consider responsible for all my suffering, who I only feel negative feelings towards?

Might conflict and collaboration, and above all separation and collaboration, not be terms that can’t go together? Might collaborating, and therefore working together on a shared project, not be out of tune with the phase of life in which I’m distancing myself from the person I’ve had next to me, so we can set out on completely different paths?

And is speaking of collaboration with relation to defence not denying lawyers’ their very role? Is the label collaborative lawyer not a contradiction in terms?

Let me remind you of what our colleague Mrs. Adorni Braccesi told us at the beginning of her statement, when she said she was intrigued by the very name of that first training course – “**COLLABORATIVE LAW**” – that he would then follow.

How can LAW be COLLABORATIVE, considering that law exists to establish every person's rights with respect to others, to define who is right and who is wrong, while dividing, splitting the two parties like an axe?

Yes, the challenge of Collaborative Practice is to put together concepts and terms that are apparently out of sync: collaboration between people in conflict and collaboration between the lawyers counselling them.

So why take up this challenge?

There's an easy answer, and it's to be found in humankind's primordial, natural needs, namely the search for **HAPPINESS**.

All of us, in the world, have something in common: we're all seeking happiness. The very decision to separate, thus putting an end to a chapter in our lives, is down to the desire to leave behind a situation that is unsatisfying, more often than not causing great suffering, to live a better life, start a new chapter and give ourselves a new opportunity, a second, sometimes third chance.

A good separation is the grounds for a good future life, for ourselves and for our children.

On 18 March 1968 Robert Kennedy made a speech at the University of Kansas in which he highlighted the reasons why GDP measures an economy but it can't measure well-being and happiness, instead pointing out that the latter are the indices for measuring a nation's true prosperity.

On 21 June 2012, in a speech presented at the +20 in Rio de Janeiro, considered one of the most wonderful speeches in the world, José Mujica, then President of Uruguay, defined happiness "*the first element of the environment*" while declaring that "*we were given life to be happy...*" and that "*development cannot fly in the face of happiness....*"

On 28 June 2012 the United Nations (UN) General Assembly established the International Day of Happiness and since then it has been celebrated all over the world on 20 March each year. United Nations member states and organizations, and other international and regional bodies, as well as civil society, including non-governmental organizations and single individuals, are invited to celebrate the

International Day of Happiness in an appropriate manner, also through educational activities to raise awareness among the public.

The pursuit of happiness was recognized as a right much earlier, in the US Declaration of Independence of 4 July 1776.

Depending on how we deal with a conflict, especially within the family, we can leave this priority, which belongs to every one of us and to humankind as a whole, further and further behind.

People dealing with a separation must be aware that, by choosing how to do it, they create the bases for their own and their children's happiness, or, vice versa, ordain a future of unhappiness for all of them.

When the option is a no-holds-barred courtroom clash, the ex-partners often lose sight of even their own benefit because their priority becomes to "*make them pay*" and make them unhappy rather than pursue their own happiness; when the option is to reach an agreement packaged by others, through negotiations carried out in a traditional manner, each party's priority is instead to take home the best possible results for themselves alone; lastly, if the option is to negotiate following Collaborative Practice, the work that will be done with the parties is totally based on the awareness that for one to come out of it well, the other has to too.

The only way to guarantee our own well-being is to ensure the other's well-being too: that's why we have to collaborate even when it's the last thing we want to do!

We can't bomb the town we live in because afterwards we'll be the ones walking through the wreckage we have caused. In the same way, we can't get separated and leave a bombsite behind us, because neither of us can be happy at the cost of the happiness of the person who is or was next to us; while knowing that we've got one up on them by hiding economic resources or depriving the children of a parent; while remembering that we've argued over the most ridiculous of wedding presents; while taking away an image of ourselves as an angry, revengeful, aggressive, violent and greedy person. In this view of things, lawyers become incredibly important partners and sponsors of the people who are separating because they have to help them pinpoint the conditions for their

happiness. Therefore they have to pay utmost attention not to make crucial mistakes that would distance their clients from that happiness they want to pursue.

As professionals helping people who are separating we have to avoid doing what those doctors and surgeons do who don't have a 360° vision of the people they are treating or operating, who see them as just a patient, or at times part of a patient. Who don't see the person they've got in front of them. In short, those doctors who limit their intervention to just a part of the body, as if they were body mechanics.

In the same way, lawyers, for example, could be tempted just to protect their client's rights without wondering about the consequences that their action could have or asking themselves how they can help that person asking for counsel during separation to achieve their main goal, namely happiness, and not just survive that moment of their lives.

We also need to dispel the myth that the matter of a good separation must be limited to couples with children.

Childless couples who have separated will also go on telling the story of how they separated for the rest of their days, because that separation, and how it happened, will follow and mark them for life.

Collaborative Practice is not just a method; first and foremost, it is a new way of looking at separation for the people going through it and a new way of counselling for the lawyers.

The change that separation implies which I have described several times, and people's self-determination which is at the basis of Collaborative Practice, are the alpha and omega of a concept of life according to which it is not so much what happens that is important but how each of us reacts to these events.

It is in our way of dealing with a particular circumstance that we will find out whether the event has been positive or negative for us. Even the most serious of misfortunes can point life in the direction of unexpected and incredibly positive solutions, in the same way as the opposite can be the case, in other words, that objectively fortunate events can transform into occasions for disasters.

The power to choose that every human being has with regard to anything that happens to them, the

power to choose how to live that event and how to deal with it: this is what people's self-determination and responsibility materialize into.

Happiness is not a right that can be acknowledged from the outside or that we can expect from others. On the contrary, it is the consequence of something right inside ourselves, something that we ask ourselves, it is the act of taking our own RESPONSIBILITY. That is, as the term itself says, the ability to respond to what happens to us.

From this outlook, separation is no longer an illness to be forgotten, a dramatic moment to cancel even from our memories or an experience to be cast out. On the contrary, it is an experience to cherish and a launch pad for and towards the future.

To take responsibility is to assume the responsibility of choosing how to react to a given event, whether this is separation or something else.

Separation is the result of a journey that belongs to the past and what has happened can't be changed. However, how to deal with that separation is still in the hands of the two people who have got to this point.

What will happen from then on is a story that is still to be written and the genre of story depends on its main characters.

They can give a judge the responsibility for finding the end to their shared history and for building the chapters of the future story, which all have similar plots; they can leave it up to the lawyers whether to have a part in the novel, tragedy or comedy; or, on the other hand, they can take responsibility for writing the epilogue to that thus far shared story themselves, together, so that the end can make a new beginning possible.

And we, lawyers, together with other professionals, will continue to carry out our role as defenders, but of the quality of life and the happiness of the people we counsel.

I'd like to round off this closing argument by advising all of you not to forget to celebrate Sunday, 20th March, the Day of Happiness.

Thank you.