

# Collaborative Conflict Resolution

Collaborative law is an innovative form of resolving disputes by treating the process as more of a 'trouble shooting' session, rather than a fight with a win or lose outcome. So far, this method of dispute resolution is proving relatively popular, so *Lawyer Monthly* speaks to Christoph Leon, co-founding partner of Fiebinger Polak Leon Attorneys-at-Law and a specialist in the area of Dispute Resolution. Furthermore he is a Collaborative Lawyer and has extensive experience not only in litigation but also in collaborative conflict resolution, making him more than well-placed to comment on this field.

**Collaborative law as a form of ADR is a relatively new approach in Austria. Can you share with our readers how it differs from other forms of ADR?**

The fundamental principle of collaborative law (CL) is that the conflict intermediary (attorney, tax advisor, corporate consultant, authorised expert, financial expert, mediator, coach, therapist, etc.) works with those involved as a team to find a solution. Collaborative law is based on the premise of mediation, while also transcending as it were the boundaries of this method. Unlike in mediation, where the parties deal with a neutral and impartial mediator, they are represented by their own attorneys. Any other experts involved during the dispute work with the attorneys to conduct the proceedings in consultation with the parties and act simultaneously as objective consultants. In contrast to a merely proceedings-oriented mediator, the collaborative attorney clearly positions himself as a representative of the party and his/her interests, ensuring not only comprehensive consultation in terms of legal advice, but also support with regard to the content of the case.

**Family law is often associated with a collaborative approach; do you feel it can be equally effective in the commercial arena?**

Yes, definitely! In many branches court proceedings are no alternative to negotiations. One reason for this could be that court proceedings would strain or even destroy a valuable business relationship. Alternatively, the topic may be so complicated that no sensible outcome would be achieved in court within a reasonable timeframe and without incurring significant costs. In management circles there are many individuals who want to negotiate and make decisions themselves. In this respect, collaborative law is a favourable approach when dealing with disputes, as the managers can significantly influence not only the procedure but also the outcome themselves.

**One of the potential advantages of collaborative law is that it preserves relationships (commercial and otherwise), in your experience does this ring true?**

Yes. It is made evident that taking an approach that is respectful and that recognizes the interests of the other party ultimately leads to a better position and therefore solution for the client and does preserve the relationship between the parties, which is often permanently damaged after traditional court proceedings.

One of the big advantages of collaborative law is that with a group comprising the client, the collaborative attorney and any other parties or experts involved in the CL proceedings, the power to define the course, tempo and form of the proceedings, which is freely configurable in the scope of personal autonomy, is not delegated to external third parties (court of law, judge, etc.), but instead remains with the parties themselves.

**What types of dispute does collaborative work particularly well with? Why do you think this is?**

Characterized by dignity and fairness, Collaborative Practice is for example useful in civil disputes where parties agree to maintain collaborative standards; e.g. when business and professional partnerships fall apart or disputes arise in investment, construction or labour law cases. So it works well with clients determined to prevent permanent damage to jointly created businesses/shared investments and relationships - even difficult relationships.

**What is the lawyer's role within the collaborative process?**

The collaborative attorney negotiates not for his client, but together with him/her and uses a basis of interest-based negotiation to target a more constructive outcome than would be achieved otherwise. The only mandatory rule of the procedure is that lawyers and other experts involved in the procedure are not allowed to represent the parties in court or arbitration in case the collaborative law procedure is not successful. The effect of this

mandatory rule simply is that there is nobody left with a personal interest in the court- or arbitration proceeding and therefore the chances to find a negotiated solution are multiplied.

**Do you foresee the collaborative approach becoming more popular in the coming years/months?**

Having been applied successfully in the USA and Canada for more than 20 years, collaborative law is now to be established in German speaking countries. From my point of view this new, extrajudicial dispute resolution method opens fascinating scope of opportunity in economic sector and family law. For that reason we have recently launched an Austrian Expert Team on Collaborative Law ([www.collaborativelaw.eu](http://www.collaborativelaw.eu)) and I am also member of the IACP International Academy of Collaborative Professionals ([www.collaborativepractice.com](http://www.collaborativepractice.com)), the global gathering place for those interested in learning more about Collaborative Practice.

The European Platform ENCP (European Network of Collaborative Practitioners) based in The Netherlands and Austria as one of the founding partners will be incorporated still in 2014.

**Is there anything else you would like to add?**

Especially within commercial disputes it is time to start with collaborative law as it is the ADR-procedure that ensures that the conflicting parties gain back the power to decide what is going to happen when and what is going to be the solution (not only decision) of the conflict. **LM**

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