

# **(Gay) Pride And Prejudice: The Top 5 Reasons Why LGBTQI People Choose Collaborative Law And Practice In Divorce**



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Divorce hurts. There is little difference between LGBTQI couples and heterosexual couples. However, the dissolution of LGBTQI partnerships and marriages, as well as divorce from marriages in which one spouse has come out as LGBTQI, poses some additional challenges.

In this blog, we have collected the five most important reasons that make many LGBTQI people shy away from entrusting their case to a court and prefer the support of a Collaborative Practice (CP) team.

Please note that we are writing based on our experiences in Switzerland where we do not have legal gay marriages (yet). Here, same-sex couples can register their relationship as a partnership.

## **1. The couple feels that they have lost the battle against prejudice.**

Those who have married or registered their LGBTQI partnership have probably stood up for this right within their own family or perhaps taken a public stand on the issue. This makes it more difficult if the relationship fails. It can feel like others will view our right to same-sex relationships as a failed experiment because our own relationship ended. In addition to the relationship problems, we may feel an obligation to the entire LGBTQI community to continue to fight for our rights. It can be exhausting.

The same is true for LGBTQI couples who have started a family or when a spouse has come out. They may feel a deeply rooted social assumption that a constellation with a father and a mother is optimal for the development of a child and that different models are deficient in comparison. In separation, some LGBTQI parents may fear that they will be confronted with further prejudices in their new situation and do not know how they will bear it. It can be overwhelming.

In the CP process, a coach can take the pressure off the clients, offer perspectives, and provide concrete assistance in dealing with these issues. Furthermore, the CP process is private and so affords the couple the opportunity to resolve their issues without being visible to the public. The relief that this brings about also helps the clients settle the legal aspects of the separation.

## **2. The couple needs support from people they understand.**

People who are in a crisis of trust at the end of a relationship do not want to be further misunderstood in the separation proceeding. It helps to have specialists at your side, who you can trust to understand your cultural norms and who have insight into your reality.

CP professionals are trained to create a setting in which the interests and needs of clients can be openly addressed. The trust inherent to the CP process creates the necessary freedom for the clients to openly communicate and explore their own values. It gives the clients the opportunity to share ideas and to consider their own life history/socialization in the process.

By mentioning or depicting LGBTQI persons or topics on the homepage or in advertising materials potential LGBTQI clients will see that you are concerned about their well-being and willing to address their concerns.

## **3. At least one partner fears a weak legal position.**

Life is diverse and constantly generates new forms of family. The law cannot keep up with the changes and still assumes that children have a mother and a father who are responsible for them. In rainbow families, this can lead to a situation in which a parent who plays an important role in the child's life has neither rights nor duties under the law.

For LGBTQI partnerships, in Switzerland, the legislation further assumes that both partners remain financially independent. The law does not provide for much support after the dissolution of the registered partnership. This does not mean, however, that these relationships were lived without solidarity. On the contrary, we often observe that one partner gives up a career abroad and emigrates for love. Those who start a family regularly give up or limit their gainful employment. Those who take care of their partner and work less for it set their priorities on families, not on work.

Many of these relationships and interdependencies are not recognized by law in Switzerland, which means that registered partners have fewer rights and obligations to each other. In individual cases, this can lead to disruptive results, because legitimate demands cannot be enforced in court.

In the CP process, however, solutions are possible which are not provided for by law. The clients can introduce their own fairness criteria. In particular, the interests of children are also taken into account by the CP team. Out of the box solutions that fit the particular family's circumstances can be created through the CP process.

#### **4. The couple fears court prejudice.**

If the dissolution of the registered partnership is brought to court, it is often a matter of luck which judge it is assigned to. You cannot know in advance if the judge accepts your own way of life, only tolerates it, or is even homophobic.

With an out-of-court agreement in the CP process, the points of contact with the court are reduced to a minimum. When drafting the divorce agreement, CP lawyers will make sure that it can be approved by the court without any problems. This allows the clients to act in a largely self-determined manner and to develop together their own solutions for their own family without fear that a judge is homophobic.

#### **5. In the CP procedure, the costs can be shared fairly.**

Often, one client is financially worse off than the other when the registered partnership is dissolved. In countries such as Switzerland, where the partner is only granted limited maintenance and where the law does not provide for joint assets, such financial differences may be even more pronounced. This can lead to one client being burdened by the costs of the proceedings much more than the other.

In the CP process, the clients are free to distribute the costs according to their own criteria. In addition, out-of-court proceedings are regularly faster and cheaper than contentious proceedings in court.

#### **Attempt at best practice**

How do CP professionals create an atmosphere of trust and security when LGBTQI potential clients approach us? What can we do to make it better for this community? Here are our seven suggestions at best practice for such cases (one per rainbow colour):

- - Each family member should be represented separately, even if the law does not recognize the various roles in the family (e.g. a couple of fathers and a biological donor that the law may define as mother → 3 CP lawyers, since couples can also have opposing interests).
  - Pay attention to the terms used by the clients (wife or partner; sperm donor or father; Daddy and Papa / Mummy and Mama, pronouns, etc.) and use them in all communications.
  - Take off the heteronormative glasses and be prepared to encounter a variety of life plans in rainbow colours.
  - Remember that gender stereotypes in LGBTQI relationships do not provide good explanatory models (in heterosexual relationships they often do not either) and be open to freely chosen identities and behaviours.
  - Take into account that same-sex relationships were not accepted in our society for a long time and that LGBTQI persons still experience prejudice, sometimes even hatred, because of their sexual orientation or gender identity.
  - If children are involved, focus on the quality of the relationship/care and not on biological or legal factors.
  - And as always: listen and try to find a balance between the clients. The LGBTQI community deserves our respect and will benefit from our openness and creativity.

*by Roman Kern and Carola Reetz*

- [kern@jb-anwaelte.ch's blog](#)
- <https://www.collaborativepractice.com/blog/kernjb-anwaeltch/gay-pride-and-prejudice-top-5-reasons-why-lgbtqi-people-choose-collaborative>