

# QUESTIONS CLIENTS ASK ABOUT COLLABORATIVE FAMILY LAW

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©Appendix "A" from *Collaborative Family Law, Another Way to Resolve Family Disputes*,  
Richard Shields, Judith Ryan and Victoria Smith, 2003 Thomson Carswell

**Q:** Why can't you go to court if I need to? Why should I retain you as a CFL lawyer when I can retain a lawyer to do the whole job?

**A:** When litigation is an option, we lawyers tend to go to court when we encounter problems. If we take a case that may go to court, we have to spend time preparing to go to court, just in case. Lawyers involved in a litigation case act differently, follow different procedures and involve the parties less than a collaborative case. When the parties have given up the right to go to court, all of the lawyer's problem-solving abilities are focused solely on settlement. When court is not an option, the parties and their lawyers stay at the table and keep talking, and are able to come up with creative settlements that are far better and more customized than a court could create. Even if the collaborative process doesn't succeed and you have to go to court, you have had the best of all worlds – a lawyer who specializes in settlement and, if trial is necessary, a lawyer who specializes in court. It is rare for a lawyer to be extremely skilled in both settlement and trial.

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**Q:** I'm interested in CFL, but my husband and I aren't talking and I am worried he won't listen to me. Is CFL for us?

**A:** When people go through a divorce their minds are very busy dealing with a lot of unknowns. People usually feel very worried and fearful about their future. It's hard to get the psychological space to think and make good decisions. It's also usually really hard to communicate with each other. People going through a divorce often feel that they have one foot caught in the railroad tracks with a train coming. In the collaborative process, you'll have time to breathe deeply, think and make the best possible decisions. I'll be there to support you, to keep the negotiating space safe and clear. There'll be no yelling, intimidation or disrespectful behaviour. The other lawyer will be helping your husband do this too. Often, once this negotiation climate is established, and once each person realizes that the goal is to get both of your needs met, each person can begin to really listen to the other and to move forward successfully.

**Q:** How do the costs of CFL compare with mediation or court?

**A:** CFL is far cheaper than a matter that goes to trial. Although many court matters settle before trial, court costs are often between \$20,000.00 and \$50,000.00 for each side. Some people think that mediation is cheaper than collaborative law because the parties share the cost of the mediator as opposed to each paying their own collaborative lawyers. This is often true. However, some people require that their lawyers be quite involved while they go through mediation, providing legal advice and perhaps attending the mediation sessions. If this happens, mediation may not be cheaper than CFL. Although we cannot predict the costs of the collaborative process, given that the number of meetings will vary depending on the complexity of the issues and the dynamics between the parties, fees usually range from about \$5,000.00 to \$18,000.00 for each side, with most people spending about \$8,000.00 to \$10,000.00 each for a comprehensive settlement of all of the issues. We suggest that you choose mediation or collaborative law based on which process you think is most appropriate for you, rather than because one may be cheaper than the other.

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**Q:** My lawyer says he settles most of his cases. How is collaborative law different from settling a traditional legal case?

**A:** While most family cases do settle before trial, many settle after much money has been spent and emotional trauma endured. Often, settlements are reached while everyone is under stress, to avoid the next courtroom process or a trial. The settlement is created by the lawyers based on their prediction as to what will happen in court. In CFL, from the outset, all efforts are made toward settlement. The settlements are created to satisfy your needs and interests, not according to what a judge might say. You and your partner, not the lawyers, create the settlement. Negotiations are respectful and open rather than secretive and adversarial. Unlike court, which is scheduled according to the lawyer's and the court's timetable, CFL meetings are scheduled to suit

you and your spouse. You will both have time to think and make good decisions. CFL settlements are customized to suit your particular family, are arrived at more quickly and usually with less cost than settlements reached in a traditional negotiation.

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**Q:** How do I know if CFL is for me?

**A:** Collaborative law will be of interest to you if:

1. You and your partner want to keep control over the decisions made about you and your family, rather than giving authority for decision-making over to a lawyer or a judge.

2. You and your partner accept that the other person has legitimate needs and interests that must be addressed as well as your own.

3. You place high value on a civilized divorce process.

4. You want a positive relationship between you and your partner.

5. You want to protect your children from emotional damage often caused by a separation.

6. You and your partner wish to be able to co-parent your children effectively in the future.

7. You and your partner are both willing to exchange all important information.

8. You want to keep control over the costs of the divorce process.

9. You want a customized solution that suits you and your family, rather than a more generic court-house result.

10. You and your partner have come to terms with your separation and are willing to take responsibility for creating a positive divorce experience.

**Q:** How do I know my partner will be honest and won't hide information?

**A:** There are no guarantees of honesty in any legal process. CFL relies on undertakings by both parties to make voluntary disclosure of all important information. CFL lawyers do not focus on rooting out hidden assets or income. Although you may see any financial documentation you feel is important, if you do not trust in the basic honesty of your partner, CFL is likely not appropriate for you. Remember that the cost to find hidden assets is often very high. Regardless of the process you choose, you will need to conduct a cost-benefit analysis and decide whether such a search is worth the effort. A CFL lawyer will withdraw or terminate the process if she feels her client is refusing to make full disclosure. There is no such requirement in a traditional negotiation.

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**Q:** What if we settle everything but one issue in CFL – do we have to lose our lawyers to go to court?

**A:** If all but one or two issues have been resolved in the CFL process, it is possible to refer those issues to an arbitrator, provided the facts are agreed and everyone agrees to the arbitration process and the arbitrator.

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**Q:** Which is more appropriate for us - mediation or CFL?

**A:** Mediation is appropriate for partners who can negotiate on their own behalf with the help of a neutral third party who does not provide legal advice. They are willing to consult with their lawyers when needed and to take their mediated agreement to their lawyers for legal advice before it is confirmed. CFL is appropriate for those who want to negotiate for themselves, but want their lawyers with them every step of the way to provide legal advice and negotiation support. CFL may also be suitable where the issues are technical or complex, there is a perceived power imbalance between the parties, where there has been past abuse, or where there are strong emotions and low trust.