

COLLABORATIVE LAW

A HUMANE APPROACH TO RESOLVING FAMILY DISPUTES

Prepared for Institute of Law Clerks, Ontario Newsletter, March 2002

Collaborative family law is a revolutionary new way to practice family law that is spreading like wildfire across the United States and Canada. Lawyers who are specially trained to practice collaborative family law and their clients sign a Participation Agreement in which all agree to negotiate in good faith, make full, voluntary disclosure, communicate respectfully with one another, and focus solely on achieving a settlement that meets the interests and needs of both parties. If they fail to reach a settlement and one of the clients starts legal proceedings, both collaborative lawyers are out of a job.

Rather than acting as hired guns and going to battle for their clients, collaborative lawyers adopt new skills as facilitators and coaches to help both clients create their own best outcomes. The premise of collaborative law is not simply that most litigation cases eventually settle. The underpinning of collaborative family law is the assumption that most clients are capable, with support, of making their own best decisions – they don't need lawyers or judges to decide for them – and that interest-based negotiation, rather than adversarial negotiation or litigation, produces the best outcomes.

Most of us know that parenting and most other family issues are better resolved out of court. Litigation increases animosity between the parties and costs more than most families can bear. Experienced family lawyers know the devastation and anguish that many family law litigants experience as they work through the adversarial system. Our clients come to us in various psychological stages of separation - often hurt, angry and afraid. They often enter into litigation with unrealistic expectations of winning, seeking justice or revenge. We, in the trenches, know that court rarely produces winners, takes longer than anyone anticipates and often leaves the parties unhappy and embittered. Frustrated clients, with huge legal bills, often turn their anger toward their counsel. Lawyers working in this system often become disillusioned and burnt out. Collaborative law offers an enlightened alternative.

Being a collaborative lawyer involves much more than simply being reasonable and cooperative. Collaborative lawyers appreciate that each client is a whole person, with emotional, psychological, relational and legal interests. Collaborative lawyers advise their clients about their legal rights and obligations but also

encourage them to look for solutions that go beyond the law and address their real underlying interests.

Collaborative lawyers help their clients learn to manage strong emotions, express their views and objectives respectfully, listen to and appreciate the perspective of the other spouse, and take a long-term view of the issues. At the same time, CFL lawyers continue to act as advocates, ensuring that temporary financial and parenting agreements are in place, that clients have all the information they need to make good decisions, that agreements are met and that clients are protected while they negotiate. The CFL lawyers help the parties jointly retain any necessary experts to work with the family in a neutral, balanced way.

The Participation Agreement, which prevents both lawyers from litigating on behalf of these particular clients is a hallmark of collaborative law. That Agreement provides an incentive for the parties and their lawyers to stay at the table when negotiating gets tough and to seek creative ways around impasses. But the essence of collaborative law is the mental shift that we who embrace the process must make.

Collaborative lawyers let go of many conscious and subconscious behaviours and attitudes and adopt an entirely new skillset and mindset. Law school training and the litigation approach must be traded in for new ways of practice. Collaborative lawyers act as negotiation coaches, information resources and problem solvers. They work side-by-side with both clients and the other lawyer to help the parties create their own best outcomes.

Collaborative law isn't for every client. Clients who wish to punish the other side, seek revenge, prove a point or establish legal precedent are not suitable for collaborative law. Each person must have confidence in the basic honesty of the other and each must be capable, with support, of taking into account the other person's point of view and well being.

Clients who choose the collaborative process will take away enhanced communication skills, an improved capacity to co-parent their children, and a process for resolving future disputes cooperatively. They achieve closure to their relationship with dignity at reasonable cost. For lawyers, the collaborative process integrates

COLLABORATIVE LAW A HUMANE APPROACH TO RESOLVING FAMILY DISPUTES

our personal and professional values, reduces stress and receivables and returns satisfaction to the practice of family law.

CFL groups are now established in Peel/Halton, Toronto, Hamilton, London, Ottawa, Barrie, North Bay

and Welland. Kitchener is newly organized and being trained in June. We invite all interested lawyers to join our Peel Halton Group. We meet the first Wednesday of every month at 4:30 p.m. in the lawyer's lounge of the Brampton Court House.