Collaborative Family Law: Our Experience So Far

*Sharon Cohen and Victoria Smith**

We have collectively over 30 cases where we have signed Collaborative Family Law Participation Agreements. We have had two cases with each other. In addition, we each have several files, including Cohabitation Agreements, where lawyers who have not been trained in collaborative law and their clients have chosen to work with us collaboratively. These lawyers have now taken or are planning to take collaborative training in the future. They have expressed appreciation about being mentored through the process and have participated effectively to help achieve successful agreements.

None of our cases so far have been terminated prior to final settlement.

Both of us are experienced mediators and lawyers who have a preference for negotiated resolutions. The skills required in collaborative practice are different than those used in mediation or traditional negotiation; the learning curve is steep. One of the important benefits of collaborative practice is working as a team with the other collaborative lawyer. The sensitivity, wisdom and legal expertise that collaborative teams bring to the table has been at a level we have not previously experienced. Our collaborative work has been powerful. The synergy generated between counsel and clients has resulted in creative problem solving which has continued to surprise and impress us. The level of our personal professional satisfaction, and the satisfaction expressed by our clients, has surpassed our expectations. Constructive, strategic planning between counsel to further our clients' goals permits an expanded form of advocacy unavailable to us in traditional practice.

In our collaborative cases, most of our work is done through face-to-face meetings, telephone calls and e-mail. We find this way of communicating efficient, cost-effective and human. Other than a record of minutes of meetings and joint e-mails, our correspondence brads are pleasantly thin. We arrange the location of our meetings to suit the comfort and convenience of our clients. Sometimes our meetings take place at one office consistently if that is what the clients prefer. We always provide food.

We estimate that the costs to our clients in our cases range from $4,000.00 to $18,000.00 per client. We are pleased to notice that in the practice of collaborative family law, there are virtually no account receivables. For the most part, our work is done in the presence of our clients. Because our work is transparent and the pace of negotiation determined by the clients, retainers are paid and accounts remain up to date. Within the collaborative process, there can be open discussion as to how both lawyers' fees are to be paid.

We have used mediators, parenting coaches, communication coaches, counsellors, therapists, accountants and business valuators in our collaborative cases.

Mental health professionals are invaluable when the dynamic between the parties is so emotionally complex or conflictual that any process would be lengthened or impossible without their input. In some of our most challenging files, our clients have been attending at mediation for their parenting and relationship issues prior to commencing the collaborative process. In two of those cases, the clients have chosen to have the mediator participate in all of the collaborative family law sessions. In other cases, the choice has been for the mediator or parenting coach to attend at one collaborative session, or speak to us by phone, to clarify roles and meet with the parties themselves. These professionals assist clients to communicate effectively and to develop and implement detailed parenting plans. Their inclusion is cost effective.

We have jointly retained accountants and actuaries to assist in business and pension valuations, determining income equivalents for support purposes and to give us income tax advice. These professionals have provided input through verbal reports, written reports, conference calls and attendance at our collaborative family law meetings.

The availability of arbitration in the collaborative process is debated in all collaborative groups. Some take the view that resolution of any issue by an outside party is not consistent with the collaborative process. Others hold that limited

arbitration is available when the parties otherwise wish to remain in the collaborative process. Our experience is that the issue will arise more rarely than may be feared. The interest based negotiation process, which focuses on needs and goals, rather than positions, rarely results in unsolvable impasses. However, assuming that all other strategies for moving beyond the impasse have been pursued, we believe that arbitration of a single issue by means of an Agreed Statement of Facts might be available to the parties. Our view is that should the parties require a full hearing with respect to the facts and the law, the parties should resolve that issue with the assistance of arbitration counsel, whether at the end of the collaborative process or during the suspension of it.

We are both very excited about collaborative training which is occurring in Ontario and beyond. We, and most members of our groups in Toronto and Peel, are prepared to sign Participation Agreements with lawyers who have taken at least two days of collaborative family law training. For those who are interested in exploring collaborative practice further, training is ongoing and conferences are planned. For information about upcoming events, please consult the collaborative family law Web site at The Ontario Collaborative Law Federation is planning a conference for November 21 and 22, 2003 in St. Catharines. The founder of Collaborative Family Law, Stu Webb, as well as trainers from the U.S. and Canada will be present. Last year's conference was sold out so you may want to apply early. Information will be on the web site or you may wish to contact Marg Opatovsky at to get on the mailing list. To be trained in collaborative family law, contact Marion Korn at (416) 466-6264, Barbara Landau at (416) 391-3110, Rick Shields at (905) 521-8004 or Victoria Smith at (905) 457-1660. You may wish to consider forming your own group of six or more and being trained in your own setting or community.

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Contino v. Leonelli-Contino, [2002] O.J. No.4620 (Div. Ct), online: QL (OJ)

A Case Comment

*Nicole Tellier**

Section 9 is one of five discretionary provisions in the *Federal Child Support Guidelines*,[1] and perhaps the most vexing. It applies to shared parenting arrangements where both parents have the children in their care at least 40% of the time over the course of the year. There are three appellate decisions on point,[2] none from Ontario. But late last year, the Ontario Superior Court (Divisional Court) released its ruling in *Contino v. Leonelli-Contino*, giving the Ontario family law bar some much needed guidance regarding the proper approach to these cases.

The facts are straight forward enough. In 1998, the father was ordered to pay monthly child support of $563 for one child. He applied to have the support reduced because the child was now in his care more than 40% of the time. The mother's materials claim that she offered additional time so that she could take night courses and, as a result, the child was with his father an additional evening each week. The father's income was $87,315 and the mother's income was $55,407. The motions judge ordered a retroactive reduction to $100 per month and, further, that the parties were to pay 50% of the expenses under section 7 of the *Guidelines*, with each parent claiming the dependent deduction for tax purposes in alternating years.

The court in *Contino* had the benefit of a sampling of cases employing different methods