

## WHAT IS COLLABORATIVE LAW?

Collaborative Law is a particular dispute resolution model that is often well-suited to resolve family matters. In the Collaborative Law model, both parties retain independent lawyers, who are experienced in the area of family law and who are specifically trained to help the parties resolve their dispute.

One of the ways that Collaborative Law differs from other types of legal practice is that the lawyers are specifically hired to help the parties resolve their dispute. In the Collaborative Law model, both the parties and the lawyers contract together to work in a respectful manner, and agree to disclose all documents and information that relate to the issues. If a lawyer finds out that a party has withheld or misrepresented information and continues to withhold or misrepresent information, then the lawyer is obligated to withdraw from the collaborative process and to let the lawyer for the other party know that the collaborative process is at an end.

If the parties are unable to resolve the dispute with the help of their collaborative lawyers, and decide to turn to the court system to resolve the dispute for them, then the lawyers are out of a job. They must withdraw from the case, and the parties hire new lawyers to represent them in court.

The lawyers are as committed to the settlement of the case as the parties themselves are. Because everyone has contracted to do their best to resolve the file outside of the court system, everyone agrees not to use the kind of tactics that are more common in a litigation-managed file, including threats of court. The process is centred around finding out what each parties' needs are, and on putting together an agreement that meets each parties' needs within the legal framework.

The hallmark of resolving cases within the collaborative law model is the use of four-way meetings, that is meetings with both parties and with both lawyers. Each party meets with his or her lawyer prior to the meeting to discuss the issues that need to be resolved and to discuss what the parties needs, hopes and fears are in the context of resolving the case.

Prior to the four way meetings, an agenda is set so that everyone is clear what issues will be discussed. If necessary, there will be opportunities for the parties to meet separately with their own lawyers', and then continue with the four way meeting. At the end of each meeting, "homework" is assigned to be done before the next meeting. When a four way meeting resolves all issues, then one of the lawyers agrees to write up the separation agreement, which is subsequently signed by both parties.

Mental health professionals are also available to work within the collaborative process to do divorce coaching. The divorce coaches help the parties with specific communication skills to help parents that need to have a continued relationship, and are also available to help coach the parties through the process of divorce. It is not uncommon for each partner to be in a different stage of the uncoupling process, and divorce coaches are trained to work with the parties and with the lawyers through this process.

Often, in traditional litigation-based models of family law, the emotional turmoil that a couple experiences during the separation process is exacerbated by the adversarial nature of the court process. This exacerbation increases the emotional distress and mistrust between the separating couple, breaks down their ability to communicate effectively with each other, and destroys any residual trust the couple may have had. This makes it more difficult for the parties to resolve matters, and often results in the parties having to turn to a judge to resolve interim matters, and sometimes to resolve all matters between them.

Child specialists are available to meet individually with any children involved to help assess the children's needs and desires. The child specialist works as a neutral third party to help the parties, with the assistance of their lawyers, put together a parenting plan that best meets the children's needs.

Financial counselors are also available to help the parties resolve financial issues around assets and support. Financial counselors are trained in both mediation and in financial issues that arise in divorce cases, and are available to do future-focused assessments based on various asset and support allocations.

If it is necessary to hire experts to value company or properties, the parties agree to jointly retain such experts. If the matter is not resolved within the collaborative framework and the parties end up hiring new lawyers and proceeding to court, all of the collaborative process is without prejudice (that is, they cannot be disclosed in court), including any expert reports that have been prepared, unless the parties specifically agree that they will jointly rely on such reports.

Although Collaborative Law is flexible enough to meet the needs of a variety of situations that arise in the separation and divorce process, Collaborative Law is not for everyone. It requires a commitment on the part of both parties to working together honestly and with integrity. It also requires a desire from the couple to work with their lawyers to resolve the issues, instead of relying on an outside third party (a judge) to make decisions for them.