

Imagine... A Collaborative Approach To Divorce

There is a movement in family law whereby divorcing couples can sign agreements with lawyers to not go to court. More specifically, the process is known as Collaborative Family Law (CFL) and the agreement to not go to court is binding upon the lawyers, not the couple. If one or both clients are unsatisfied, either may still march the dispute to court. They will however have to find new lawyers.

At heart, the CFL process seeks to develop consensus between the parties for a mutually acceptable settlement. The settlement can include the division of assets, spousal or child support and/or the ongoing care of children.

In traditional dispute scenarios both parties retain their own financial advisor and may be subject to a custody/access assessment. The results from financial planners may vary and in such cases, the dispute then widens to include the experts. The recommendations of the assessor may not reflect the position of either or both parties and hence their involvement may fall to conflict as well. Often, other third parties are drawn into the dispute as well.

In the CFL process, while the couple retains separate collaboratively trained lawyers, they then retain a single financial advisor and/or child expert and/or divorce coaches who form a team with the lawyers and clients. The financial advisor, child expert and divorce coaches act as consultants within a team framework. Because each party has their own lawyer though, they are assured their respective legal rights are preserved. Certainly the disposition of the lawyers is one of settlement as litigation is openly off the table. The risk of conflict is reduced in favour of improving the probability of settlement.

At issue to some persons considering CFL, is concern that they may be forced to capitulate or acquiesce on matters of importance or safety.

Firstly, no party is to be forced to agree to anything. That is why they both retain separate counsel; to protect legal rights and assure a process that addresses mutual concerns.

Secondly, either party can table contentious issues and even treatment issues. The objective is not to capitulate, but to address all issues forthrightly and develop plans to genuinely mitigate concerns.

The actual CFL process occurs in four-way meetings (clients and lawyers) and can be expanded to include the financial planner, child expert or any other consultant for that matter. Depending on the style of CFL, ancillary experts may automatically form part of the team. Various jurisdictions have developed some unique differences in approach while all the while adhering to the basic premise of reaching a settlement without the threat of litigation.

Depending on the nature of issues to be resolved, the number and durations of meetings can vary. Unlike traditional family law where meetings tend to be conducted on a schedule determined by Court process, CFL meetings are independent of Court and hence at the control of the participants. Further, because matters are never left to the discretion of a Judge, the parties retain full responsibility and control for settlements achieved.

Practitioners of CFL offer it as a more respectful way to resolve family disputes as neither side is bent on tearing down the other, but conversely, directed towards leaving relationships as intact as possible. Because collaborate doesn't mean capitulate, issues can be addressed in a manner that maintains control in the hands of the parties. The process is thought to provide for more durable outcomes whilst maintaining the integrity of the participants. This bodes well for the children and transition to new family structures.

Separating or divorcing? Consider Collaborative Family Law for a non-litigious, more respectful solution. *Google*; Collaborative Family Law.

Gary Direnfeld, MSW, RSW
(905) 628-4847
gary@yoursocialworker.com
www.yoursocialworker.com

Gary Direnfeld is a social worker. Courts in Ontario, Canada, consider him an expert on child development, parent-child relations, marital and family therapy, custody and access recommendations, social work and an expert for the purpose of giving a critique on a Section 112 (social work) report. Call him for your next conference and for expert opinion on family matters. Services include counselling, mediation, assessment, assessment critiques and workshops.