

COLLABORATIVE LAW

FREQUENTLY ASKED QUESTIONS AND ANSWERS

Q: I want to work things out, but I am worried that my spouse doesn't want to talk. What incentive is there for my spouse?

A collaborative law process is purely voluntary. Your spouse must choose to participate. The process has, in our view, many advantages, but if your spouse isn't ready to communicate with you in any way (other than through lawyers and affidavits) then there is not much you can do about that. However, your spouse may also perceive the same advantages that you do, and in weighing the pros and cons, may want to try CFL first. They may wish to avoid the rancor, expense and delay of court, and they may also care about doing as little damage to your relationship or your kids as possible. Also, be aware that your current assumptions about what your spouse is going to do or what they want may be colored by the stress of your recent interaction - and your separation. This a very stressful time for both of you, and with time and reflection they might come to a point where they are willing and able to join you in a collaborative negotiation process.

Q: I am going to disclose everything financially, but what makes my spouse do the same?

This is a voluntary process that each of you has chosen. The parties voluntarily provide the information and then verify it by providing supporting documentation. Provision of the information does not guarantee acceptance. Your lawyer will likely have difficulty recommending that you accept information that is incomplete or isn't verified by any independent source (tax records, receipts, balance sheets, income statements, etc.). If you or your lawyer are not satisfied with the disclosure, negotiations are going to be very difficult, and that is not in the best interests of your spouse who has chosen this process, one assumes, on the hope that it will succeed. If you are convinced your spouse is hiding assets or income you can openly discuss it at the next four-way meeting, and let them convince you that the situation is like they represent, or you can end the process. One last point, your spouse's lawyer is obligated to ensure that the disclosure rules are respected and if they aren't, they themselves are obligated to withdraw from the file.

Q: Is CFL cheaper and faster than court?

We believe that, generally, it is less expensive to resolve family law issues by way of a negotiated agreement than through court. That said, CFL isn't "cheap". Like anything else involving highly trained professionals, the lawyers that will be working for you and with you will be charging an hourly rate for their time, and that rate is not "cheap". However, they won't be wasting their time (and your money) on preparing lengthy court documents and filings, waiting in court, or trying to convince a judge that you are right. Instead they will be working on and managing the negotiations, getting you focused on

your needs and wants, reviewing your legal rights, crunching numbers, and building an agreement piece by piece.

Our experience is that the process is much faster than court. You don't have to wait to resolve anything, nor be a slave to the ever-so-slow moving court docket. The parties and the lawyers can, subject to everyone's schedules, and comfort level, move the matter along quite quickly. How does speed relate to cost? Generally, it doesn't - but \$2,000 or \$3,000 spread over a year of court activity vs. the same amount spread over 2 months can make a difference in perception. If the lawyers and the parties want to move it, and everyone is working hard, the bills can get significant quickly. That is balanced however as most people find significant value in getting through this difficult process in a timely way and then getting on with their lives.

Q: Okay, possibly cheaper, possibly faster - why can't you be more certain?

We don't want to make claims about this process that aren't solidly accurate. We do not want to mislead anyone. Like snowflakes, there are no two family law disputes that are alike. Even cases with the exact same basic facts - two 50-year-old employed civil servants making 50K each, two kids, one \$150,000 house with a 50K mortgage - can lead down different paths. One unreasonable party with some emotional issues and a score to settle can mire everyone in rancor and court proceedings for years, costing a fortune and destroying family relationships. The same basic facts with a different approach, a different attitude, if we may, an enlightened, forward thinking attitude, can have dramatically different results: a fair and durable agreement reached quickly and efficiently, that preserves parental relationships necessary for the cooperative raising of children into the future.

Therefore, we need to qualify our "cheaper, faster" claim because even with the same basic facts, the attitude of the parties could possibly make the CFL process more expensive and longer than reasonable parties proceeding through another process.

Q: What happens if we do not agree?

If Agreement is not reached, the lawyers must withdraw from the matter, and the parties must litigate the contentious issues (whatever they cannot agree upon) in court with different counsel. CFL lawyers are settlement experts like trial lawyers are trial experts. There is a large element of trust between both parties and both lawyers in the CFL approach. This trust would be hard to create if the clients perceived the other counsel as someone who might one day be cross-examining them in court! While clients may see this as a waste given that the new lawyer will by necessity have to familiarize themselves with the issues, there are two significant benefits to note. First, the CFL lawyers have likely narrowed the issues, and by way of (partial rather than global) agreements removed from the dispute a large number of the issues (perhaps all of them save the most contentious) thereby saving litigation cost and delay. Second, the clients have the benefit of having specialists for each phase of the dispute - settlement experts (CFL lawyers) for the settlement phase and trial lawyers for the trial phase.

Q: What about complicated financial things? I have some stock options and a pension - don't we need experts for those things?

A: You might - and the beauty of this process is that usually the lawyers can agree on whom to use. That means one expert rather than two. In a non-cooperative process often each "side" gets their expert reports and then you send the other expert's report to your expert for a critique. Then, if its gets really stupid, you have to pay your expert to go to court, meanwhile you spend a lot of money to attempt to discredit the other expert, and in the end you've possibly spent more than the difference in the two expert valuations!

Q: Why haven't I heard of this before?

A: "Collaborative Family Law" is a relatively new concept. It was born in 1991 in Minneapolis, Minnesota, U.S.A., and started with an idea, by a group of lawyers, to try to "do divorce differently". The basic concepts were put together and they started to practice this way with a small group of lawyers. Their success (and the positive feedback from clients) caused the idea to grow, and from that beginning the idea and practice of CFL slowly moved to the Western U.S., moving north into British Columbia, and then slowly east.

The process spreads organically, in that it takes a group of lawyers in an area to organize, train, and then form a practice group. That takes time because it takes a very specialized skill set to do this work - and a lawyer cannot acquire that skill set overnight. First, he or she needs a good grounding in family law practice skills. Then he or she needs further background in interest-based negotiation and mediation. This also requires not only courses but also hands-on experience. Then, further training in collaborative law techniques is also necessary. That requires a groundswell of interested lawyers to not only organize but to then pay for and take that training. Then that group, once trained, needs to organize itself, agree on membership, protocols, common documentation and direction. Then and only then can CFL "happen".

Q: How is this going to work for us when my spouse is just so wrong about so many things! We are never going to agree about anything!

A: Before you take your first step down the path of separation and divorce, please accept one fact. You are not, through the process of court orders and divorce judgments, going to force your spouse to change. You couldn't, through years of marriage, change them, so please free yourselves from any illusion you may harbor that now they are going to "get theirs" or that the court will finally settle all those arguments by writing in the divorce judgment: "I find that the applicant is right and the respondent is wrong." The game of chasing vindication through the court process is a terribly expensive and emotionally devastating game to play, and usually ends in disappointment.

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If you accept that fact, and focus instead upon what must be settled between you, you will find that the number of issues is not that big, and that it isn't impossible to agree on things. The court is going to have to find some reasonable decision points for your issues that are fair to both parties. If your lawyers can determine and find those reasonable points and can recommend to both of you to accept agreement at those points, then agreement is possible.

Agreement is also more likely if there is some understanding of the other party's viewpoint. Understanding comes from effective communication. We can tell you without equivocation that court pleadings and affidavits are not "effective communication". It is also important to distinguish between "Understanding" and "Approval". You do not have to approve of his or her viewpoint, way of being or lifestyle, but understanding why they want what they want is sometimes very helpful. Remember, you are not about to get more control over them or their parenting style now that you are separated. Short of some substantial concern about the child's safety, the court is not going to micro-manage their life or their parenting either.

This process is not right for everyone, but if you understand what is reasonably achievable through the divorce process, and seek first to understand your spouse's viewpoint, you might be surprised at what is possible.

