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## Collaborative Family Law

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A (relatively) new alternative dispute resolution process is gaining increased traction in the family law world. Collaborative Family Law (CFL) arose as a response to the difficulties of family litigation and the limitations of family mediation. CFL is an innovative approach to resolving issues in a separation, including issues of custody, access, support and property division. CFL is providing a new experience for people going through separations.

The traditional process of negotiation offered to couples going through a separation has been the adversarial legal model. In this model, the negotiations tend to be conducted under the implied or overt threat of litigation whether the parties are in court or not. In contrast, the CFL process is confined to settlement without the threat of court intervention.

Mediation can be a powerful process option for couples. However, in mediation, parties work with one neutral third party who acts as a facilitator for discussions between them. That approach is not always appropriate for everyone. In addition, some parties fail to obtain legal advice prior to or during the mediation process. If these parties later obtain legal advice, the settlement reached in mediation tends to be more likely to break down. In the CFL process, by contrast, couples have their lawyers with them at all times during the negotiation process.

The CFL process seeks to protect the intangible interests of the parties to preserve relationships with extended family and mutual friends, to co-parent amicably, to be treated with respect, and to control the process and the outcome. In traditional adversarial negotiation, these intangible interests are often ignored.

In Collaborative Family Law, couples agree to act in good faith, make full disclosure, put their children first, and consider each other's perspectives and interests. Collaboratively trained lawyers act as negotiation coaches, information resources, and advocates

for the interests of their clients and the integrity of the process. The underpinning of Collaborative Family Law is that it is conducted on a "without prejudice" basis, where the parties and their lawyers agree that the lawyers are retained solely to facilitate the negotiation of a mutually acceptable separation agreement. If either party decides they wish to end the CFL process and go to court, the lawyers are disqualified from further representation.

In the CFL process, parties and their respective lawyers get together in settlement meetings. In these meetings and throughout the CFL process, the lawyers encourage the clients to take control over the agenda for the meetings and for the ultimate outcome. The lawyers work with their clients, encouraging them to think and speak for themselves. They assist their clients in assembling and exchanging financial disclosure and illustrate to them how to use that information to generate options for settlement.

It sometimes becomes necessary to involve other experts in the CFL process. A child specialist may be engaged to work independently with the clients to develop a parenting plan, or a valuator may be jointly retained by the clients to appraise a property or to value a business. These experts are neutral in their relations with the clients as they are working for both spouses. This not only reduces conflict, but it saves the parties money as they share the cost of one expert rather than retaining separate experts to do battle in court.

CFL requires an honest commitment by both spouses and their lawyers to negotiate matters reasonably, respectfully and with full disclosure of information. While there is no guarantee that matters will be resolved, there is a high chance of success where participants are committed to these goals.



CFL is not for everyone; some cases involving extremely high conflict or a need for immediate court intervention may not be suitable for the collaborative approach.

For many people going through a separation, CFL is a welcome alternative to the adversarial approach. At SorbaraLaw, we have three family law lawyers trained in Collaborative Family Law: Grace Sun, Lynn Dramnitzki, and Jennifer Black. Feel free to contact any of them to discuss whether the CFL process is appropriate for you.

#### **About the Author**

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