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## The Three W's of Collaborative Family Law

WHAT is it, WHAT are some important attributes you should know about, and does it WORK?

### W1 - WHAT is it?

Collaborative Family Law is a structured negotiation process where spouses negotiate their family law issues in a safe respectful and supported 4-way meeting environment. The process is controlled by two specially trained lawyers who collaborate to ensure respect for communication protocols, provide legal advice and support to their clients, and keep the activity focussed on productive discourse, information exchange, and option analysis. The goal is the discovery of the best possible solution for the parties as they define it followed by the completion and execution of a written separation agreement.

### W2 – WHAT are a few important attributes I should know about?

#### Bargaining Model

The collaborative process happens via interest-based negotiation. This is distinct from positional bargaining that often accompanies litigation. Positional bargaining can succeed too, but is usually less efficient (any focus on settlement solutions is often deferred until "litigation fatigue" sets in) and can result in relatively crude solutions. Interest-based negotiation is at its heart a very simple three-step process. Gather all available information without judgment or emotion, generate all options without judgment or emotion, and then analyze those options towards selecting one that best satisfies and meets the most interests. Lawyers in a traditional positional model, communicating bluntly through letters, will generally start at Step 3 by advocating options – skipping the information gathering and option-brainstorming part entirely. This tends to leave much of the creative power of intelligent lawyers like fruit to wither on the vine. It can also leave each client feeling like they haven't been heard, like their real concerns were unexplored. That can significantly harm client "buy in" to the solution, which can lead to compliance trouble down the road.

#### The Withdrawal Contract (and why it is so important)

The entire process, by written contract, happens exclusively outside of court. When they sign the Participation Agreement, each counsel and each spouse agrees that counsel must withdraw from representation should the matter go to court.

This key distinguishing point makes the motivation and goal of all the participants singular and congruent: settlement, and nothing but mutually agreed terms of settlement. Counsel become self-interested in settlement.

Rightly or wrongly the general public sees lawyers as "benefiting" from acrimonious litigation. Lawyers, including me, bristle at this as we know too well the toll family law litigation has on counsel. It is however an accurate statement of public perception.

In CFL, if the negotiation fails, the lawyer faces the music just like those on "The Apprentice" – they will be called to the boardroom, will face The Donald, and they will be fired! This guarantee lets the client really viscerally feel that "my lawyer is really in this with me". This guarantee assuages that deep client fear that their lawyer might be one of "those" lawyers that leads them down into the "divorce from hell" for their own personal gain.

## CFL is Demanding, Not Right for All

While the promise of CFL is alluring to separating couples, it must be noted that it is hard work, and it is not for everyone. It is for those who can step up, take ownership and responsibility for their life, relationship and separation and who want to have more control over the terms of their separation.

CFL expects each spouse to sit in a room and talk to perhaps the last person in the world they want to talk to at that moment. If they are the leave-er, they aren't anxious to pack their bags for the inevitable guilt trip that awaits them in that room. If they are the leave-ee, they aren't anxious to be confronted with he or she who has just rejected them, crushed their dreams and ruined their life.

Why sit in that room then? Behold the paradox – the other spouse who wields so much power to hurt and shame simultaneously holds the keys to unlock each door that stands between the first spouse and final resolution of the matter. Each spouse has a fistful of keys that the other spouse wants, for example a spousal support waiver, the other half of title to the house, a Jewish Ghet, or maybe it is a tiny recognition from the other spouse of their intense love for the kids – each has something the other wants.

### Differences with Mediation

CFL is not a co-mediation. There is no neutral in the room. There are two collaborative lawyers who together as a team control the process, keep the communication respectful, make sure each outstanding issue gets explored and addressed fully, and who jointly record their progress. Simultaneously, each lawyer also sits in the room as partisan counsel to their own client, fully available to answer questions, develop options, guide and advise. This meets a concern of some mediation clients, who, despite the skill of the mediator, feel awfully alone and unsupported in the mediation process. They also fear having to take the product of the mediation back to their own lawyer and possibly hear how bad a job they did or "how could they have agreed to that?!"

### W3 – Does it WORK?

In a word, yes. It cannot guarantee success, but our experience locally, provincially, nationally and internationally has been overwhelmingly positive.

I think the success flows from the fact that CFL self-selects the best-intentioned clients who are ready to take adult responsibility for all of the good and bad of their relationship and who want greater control of their family law issues. If there is a better predictor of success for family law negotiations I don't know what it is.

The CFL process contains much promise. I have seen separated spouses yell, and cry, and grow, and laugh. I have seen broken communication pathways rebuilt, and I have been hugged by my colleague's client at a signature meeting. CFL isn't therapy, but it can be therapeutic. Done right, the negotiations are efficient, respectful and dignified.

CFL can work for those spouses that choose it and are ready to do the work. Apart from being my favourite work, it is also in my experience better, cheaper and faster.

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