

COLLABORATIVE PRACTICE Toronto

Previously Featured Article

Collaborative Law Issues

"What is Collaborative Law? I'm trying to decide what route to take to resolve my divorce, and I'm wondering how Collaborative Law differs from methods such as litigation and mediation?"

Collaborative law is a new way of helping separating families resolve their disputes respectfully and with dignity. All participants agree to work together openly, honestly, and in good faith to find "win-win" solutions to the needs of both parties and their children. At the outset, a commitment is made:

- that neither party will go to Court or threaten to go to Court;
- that negotiations will be principled, dignified, and respectful;
- to engage in open communication and exchange relevant information and
- to create an agreement that takes into account the highest priorities of both parties and their children.

The key difference between Collaborative Law and litigation is that by agreeing not to go to Court – and not to even threaten to go to Court – the group can focus on developing the best settlement for the parties after brainstorming and reviewing the options.

Here are some other important differences.

In Collaborative Law:

- The negotiations are based on interests, needs, and reasons.
- The negotiations take place at four-way meetings with both parties and their lawyers present at mutually convenient dates and times.

In litigation, the negotiations are based on positions and are adversarial.

In litigation, the negotiations are often made at the Courtroom door under stressful conditions to avoid the next Court appearance, at the Court appointed schedule.

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| <ul style="list-style-type: none"> ➤ The parties are empowered to make informed decisions. | <p>In litigation, the Court imposes a decision.</p> |
| <ul style="list-style-type: none"> ➤ The parties share control of the process and own the outcome. | <p>In litigation, the Court has control over the process and the outcome.</p> |
| <ul style="list-style-type: none"> ➤ The lawyers act as coaches and role models for constructive communication, providing legal advice, generating options for resolution, and assisting you in improving your listening, communication, and negotiation skills. | <p>In litigation, the support team is not readily accessible to help.</p> |
| <ul style="list-style-type: none"> ➤ The lawyers are always part of the team, and mental health professionals, child specialists, and financial professionals are available as part of the team as needed. | <p>In litigation, the support team is not readily accessible to help.</p> |

Collaborative law is cost effective and timely; litigation is lengthy, and financially and emotionally draining. Collaborative law focuses on common interests; litigation focuses on differences and polarizes positions.

In mediation, there is one neutral person who assists the parties to work out a mutually acceptable settlement. The mediator, who may or may not be a lawyer, does not act for either party and does not provide legal advice. In a typical mediation, the clients attend mediation without their lawyers. After the mediation has been completed, lawyers for each of the parties provide independent legal advice regarding any proposed agreements.

In Collaborative law, each party has their own lawyer present at all times, while maintaining the same commitment to settlement as their sole agenda. Each client has quality legal advice and negotiating support throughout the process. The lawyers work as a team to assure that the process stays balanced, positive and productive, and to guide the parties to their best possible settlement.

In my opinion, Collaborative Practice is the best of both worlds. You and your partner have your own collaboratively trained lawyer by your side throughout the process, in a safe environment to help you make the most informed decisions for the family in a respectful way. By preserving respect and encouraging cooperation, Collaborative

Practice helps parents and children keep family bonds while embracing a healthy new beginning.

*By Sheila Kirsh, as appeared in the April 2005 issue of **Divorce Magazine**. Sheila Kirsh is a Toronto-based experienced family law lawyer who has been practising Collaborative Law for several years. She is a Director and Founding Member of the Collaborative Practice Toronto group, and sits of the Executive of the Family Law Section of the Ontario Bar Association.*

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