



collaborative  
practice **toronto**



**A Constructive and Dignified Approach to  
Separation and Divorce**

# Collaborative Practice Information

## **Why Collaborative Practice?**

With a unique problem solving approach, Collaborative Practice allows divorcing and separating couples to put family first and reach creative legal resolutions without stepping foot in a courtroom.

## **What is the process?**

Collaborative Practice is an out-of-court resolution process for separating and divorcing couples. Each spouse is represented by his or her own lawyer throughout the entire process. Often, the skills of a neutral family therapist and/or financial specialist are utilized. With an emphasis on full disclosure, respect, and open communication, this customized approach is client-directed, family-focused and promotes long lasting legal agreements.

## **Who is it for?**

The collaborative process is ideal for spouses seeking an alternative to traditional, court-based approaches to divorce and separation. It's for individuals who want to maintain the best possible family relationships, now and in the future, especially for the sake of children. It's for spouses who recognize that they're the best at making decisions about family and finance, and not someone else.

## **Does it work in cases where there is conflict?**

Absolutely. The job of the collaborative professionals is to "set the tone" for positive communication. People in a legal dispute often feel vulnerable and can be less aware of how their patterns of communication can cause problems. The collaborative professionals help each client to present his or her interests and needs in a positive manner that can be heard by the other participants. The focus of negotiation meetings is to find a solution, not to attack each other.

## **Where do people find collaborative professionals?**

[www.collaborativepractice.toronto.com](http://www.collaborativepractice.toronto.com)

[www.ocf.ca](http://www.ocf.ca)



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# Divorce: Collaborative vs. Litigation

	<b>Collaborative</b>	<b>Litigation</b>
<i>Who Controls the Process</i>	You and your spouse control the process and make final decisions	Judge controls process and makes final decisions
<i>Degree of Adversity</i>	You and your spouse pledge mutual respect and openness	Court process is based on an adversarial system
<i>Cost</i>	Costs are manageable, usually less expensive than litigation; team model is financially efficient in use of experts	Costs are unpredictable and can escalate rapidly including frequency of post-judgment litigation
<i>Timetable</i>	You and your spouse create the timetable	Judge sets the timetable; often delays given crowded court calendars
<i>Use of Outside Experts</i>	Jointly retained specialists provide information and guidance helping you and your spouse develop informed, mutually beneficial solutions	Separate experts are hired to support the litigants' positions, often at great expense to each
<i>Involvement of Lawyers</i>	Your lawyers work toward a mutually created settlement	Must spend a lot of time producing adversarial documents and attending court rather than focusing on finding solutions
<i>Privacy</i>	The process and discussion or negotiation details are kept private	Dispute becomes a matter of public record and, sometimes, media attention
<i>Facilitation of Communication</i>	Team of Collaborative Practice specialists educate and assist you and your spouse on how to efficiently communicate with each other	No process designed to facilitate communication
<i>Voluntary vs Mandatory</i>	Voluntary	Mandatory if no agreement
<i>Lines of Communication</i>	You and your spouse communicate directly with the assistance of your collaborative professionals	Your lawyer communicates with the other lawyer directly and then communicates what has been discussed to you
<i>Court Involvement</i>	Outside court	Court-based

Inspired by the *International Academy of Collaborative Professionals*

# Neutral Family & Financial Professionals

Separation and divorce often involves not just legal issues, but also challenging financial and emotional issues. Often neutral professionals that have collaborative training are added to the team. They include family professionals and financial professionals.

## FAMILY PROFESSIONAL

Families often benefit from working with a highly skilled family professional to help provide important parenting advice to ensure that the children's needs are met throughout the process, and moving forward. In being part of the collaborative team, the family professional can play an effective role in ensuring a custom resolution that accounts for the well-being of the parents and their children.

These professionals can be social workers, psychologists or therapists and may also be trained mediators. They have specialized training in family dynamics and in divorce issues.

The family professional can help:

- Identify and prioritize the concerns of each person
- Facilitate effective communication between the parents
- Work collaboratively with each spouse and their respective lawyers to enhance communication and reduce misunderstandings
- Direct best efforts towards keeping the Collaborative Process moving towards resolution
- Develop effective co-parenting skills as required
- Develop parenting plans as required
- Occasionally, and if the parents agree, may interview children to determine each child's needs in the context of the divorce and provide information to help parents' development or implement their parenting plan

## FINANCIAL PROFESSIONAL

The financial ramifications of a separation can be complex. Issues such as budgeting, property division, tax liabilities, family support and business and pension valuation are all interdependent elements of the divorcing family's financial future. By working with a neutral financial specialist, spouses have a better chance of protecting their financial security during and after divorce.

These professionals can be financial planners, accountants, Chartered Business Valuators, and/or pension experts.

The role of the financial specialist might be to:

- Value businesses, stock options, RSUs; determine income for support purposes
- Identify, clarify, and prioritize financial needs and concerns
- Analyze income, expenses, assets and liabilities, and assist with financial disclosure
- Assist in determining adequate budget and financial arrangements for the children's changing needs
- Assess tax ramifications of settlements under consideration
- Contrast and compare different settlement scenarios, and empower spouses to make fully informed financial decisions
- Formulate constructive and creative solutions to complex financial problems
- Provide ongoing practical financial guidance during the Collaborative Process and assist with the implementation of various financial components of the settlement agreement



When a divorcing couple owns a business or one spouse holds an interest in a business, the division of property may become more complex.

Before beginning settlement discussions or pursuing litigation, it is critical to obtain an accurate valuation of the business. This generally involves retaining an independent valuator, such as a Chartered Business Valuator, who will examine, amongst other things, the financial position of the business, economic and industry developments and the unique characteristics of the business to determine the value of the business. The valuation process and the business valuator's role however may differ if it is undertaken in a collaborative family law setting versus a litigation setting.

## Business Valuations in Collaborative Process

In a Collaborative Law context, it is common for both spouses to retain only one business valuation expert, which makes the process less adversarial and less costly. This expert may provide independent conclusions, act as the financial neutral, provide advice and mediate financial issues, while considering the parties' objectives and the joint instructions of the lawyers.

The Business Valuator's role in the collaborative engagement differs significantly from his or her role in a litigation context, as follows:

- In addition to a business valuator's traditional services (i.e., business valuations, income calculations, etc.), a business valuator may facilitate a creative financial settlement that meets both of the parties' objectives;
- If both parties trust the expert and can be fully involved in the financial disclosure process, it is more likely that they will also trust and accept the opinions of the expert, which shortens the duration of the legal process; and
- Where there are two experts, both valuers must work together on behalf of the parties to protect their client's respective interests and attempt to meet their objectives in a way that fosters cooperation and promotes resolution. The experts are not retained to critique each other's work.

## Business Valuations in a Litigation Context

Generally, in a litigation context, both spouses retain their own business valuation expert. There are some common problems with this method including:

- Duplication of work when there are two experts involved which adds to the cost of the valuations;
- In some cases, the adversarial nature of each spouse retaining their own expert may create a bias in the expert's conclusions of value; and
- Even though experts may be equally qualified, they can arrive at different value conclusions based on, amongst other things, differing methodologies and interpretations of supporting data. In these cases, the experts must defend their opinions of value and prepare critique reports of each other's work. The structural process may not allow for business valuers to find common ground in what is a subjective opinion of value, thereby increasing potential costs and delaying a resolution of the issue.

## Conclusion

While Chartered Business Valuers have to maintain their professional obligation to provide independent opinions of value supported by a reporting letter outlining, amongst other things, the work undertaken, the assumptions made and any limitations on the findings, a joint retainer in the Collaborative Law context offers several advantages to the divorcing couple.

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