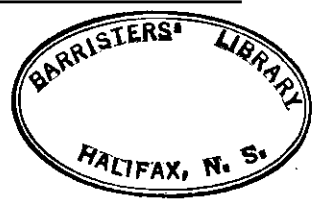


# The Nova Scotia Law News

NOVA SCOTIA BARRISTERS' SOCIETY

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## Collaborative Family Law



By Robyn L. Elliott

### What is Collaborative Family Law?

**C**ollaborative Family Law is an innovative approach to the resolution of family law disputes. The collaborative family law model is based upon the premise that much family law conflict is better resolved outside of the adversarial system, and that within the appropriate framework most clients are capable of resolving their disputes without calling upon judges and lawyers to make decisions for them.

In Collaborative Family Law, each client is represented by a lawyer through a series of four-way meetings focused upon collaboration and settlement. The collaborative lawyers act as negotiation coaches and facilitators. Collaborative advocates are responsible for advising their respective clients and managing the process. Collaborative lawyers encourage clients to communicate and engage in creative problem solving for interest-based "win-win"<sup>1</sup> settlements. These lawyers encourage clients

to control the outcome and recognize that solutions are not limited to those dictated by law.<sup>2</sup> The model requires a substantial shift on the part of family law litigators who must abandon traditional training as gladiators and learn new skills in collaboration, facilitation, and conflict management. The process teaches clients how to communicate and resolve their differences in a positive manner and increases the likelihood they will be able to successfully resolve conflict together in the future.

Prior to engaging in the Collaborative Family Law process, all participants (clients and lawyers) sign a Collaborative Law Agreement in which they commit to the process and agree to "seek a better way to resolve our difference justly and equitably."<sup>3</sup> The Agreement includes written commitments to:

- resolve the disputes without court intervention. Indeed, the contract provides that any resort to adversarial court action automatically terminates the collaborative law process. The participants

agree not to use threats of abandoning the process or resorting to litigation as a means of forcing settlement. If the process is abandoned or terminated without agreement having been reached, both lawyers are disqualified from representing either party in future litigation.<sup>4</sup>

- full, honest, open and voluntary disclosure of all relevant information;
- engage in informal discussions and conferences and "vigorous" good faith negotiations;
- retain experts (for example; accountants or child psychologists) jointly where necessary and direct the experts to work in a neutral and cooperative effort to resolve issues; and
- protect the confidentiality of the process.

### The Origins

**C**ollaborative Family Law began in the United States in the early 1990s when Minnesota lawyer Stuart Webb

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developed the collaborative model of dispute resolution. Mr. Webb was searching for a means to create a "settlement climate"<sup>5</sup> in family law disputes and determined to do so by applying principles of mediation to family law disputes in a circumstance where adversarial court proceeding were not an option. The focus would then be upon interest-based negotiation in a climate conducive to settlement.

The collaborative model has since been embraced by lawyers throughout North America. Family law lawyers across Canada have formed organizations and developed standards for practice in their jurisdictions. Lawyers are very excited about the model which it is said produces good outcomes efficiently and leaves clients more satisfied and lawyers feeling rewarded in their work.

Nova Scotia family law lawyers are enthusiastic about Collaborative Family Law. In September 2001, four lawyers met to discuss the model and prospects for bringing Collaborative Family Law to Nova Scotia. Standards for training were determined and training with qualified trainers was scheduled. By June 2002, fifteen lawyers (11 from the Halifax Regional Municipality and 4 from other areas of the Province) had completed nine days of training and were qualified by the newly formed Association of Collaborative Family Law Lawyers (N.S.) to offer the service to family law clients. Twelve lawyers have completed portions of the training program with more training scheduled for the Fall 2002.

Training standards in Nova Scotia are similar to those in other Canadian provinces and include five days of mediation training (a

minimum of two days on mediation in the collaborative family law context); two days of interest-based negotiation training; a further two days of Collaborative Family Law training; and a continuing education component.

## The Future

**C**ollaborative Family Law is in its infancy in Nova Scotia. Those qualified by the Association to offer the service are looking forward to assisting clients in resolving family law disputes within the collaborative family law model. Our colleagues in Western Canada and the United States have much positive to say about their experiences with collaborative family law. Former family law litigation attorney Pauline H. Tesler of California sums up her practice as follows:

"The power of this model to help bring clients through the divorce passage with integrity and satisfaction has continued to astonish and delight me. The ability of collaborative law to engage the most positive and creative problem solving abilities of lawyers often astonishes and delights clients. Again and again, clients are supported by their collaborative lawyers to aim for reasonable, mutually-respectful agreements as the normal, expected way to resolve divorce-related disputes, and are taught to regard litigation as "the emergency room cum intensive care unit" of the legal system. Again and again, settlements are reached that expand the pie and customize outcomes in ways that few courts are able to achieve. In the process, fees and costs are minimized, high quality legal counsel and negotiation assistance are built in and the ability of divorcing spouses

to cooperate and co-parent after divorce is maximized."

For more information on Collaborative Family Law and the Association of Collaborative Family Law Lawyers (N.S.) please visit our website at [www.collaborativefamilylawyers.ca](http://www.collaborativefamilylawyers.ca).

\* Robyn L. Elliott practices family law in Halifax and is Vice-President of the Association of Collaborative Family Law Lawyers (N.S.)

<sup>1</sup>Roger Fisher and William Ury, *Getting to Yes: Negotiating Agreement Without Giving In*, Penguin Books 1981.

<sup>2</sup>Indeed solutions may depart from solutions that may be imposed at law but address important interests (such as emotional or financial interest) that the traditional adversarial model considers irrelevant.

<sup>3</sup>Collaborative Law Agreement of the Association of Collaborative Family Law Lawyers (N.S.).

<sup>4</sup>This distinguishes collaborative family law from traditional family law negotiations or mediation wherein the threat of litigation is always present. In collaborative family law the participants commit in writing to resolving their disputes without resort to court action.

<sup>5</sup>Collaborative Family Law materials presented by Judge Michael H. Porter (Ret'd) of Calgary at Collaborative Family Law training in Nova Scotia November, 2001.

<sup>6</sup>Pauline H. Tesler, *Collaborative Law: Achieving Effective Resolution in Divorce without Litigation*, ABA Section of Family Law, 2001, pp. xix - xx.