

# COLLABORATIVE PRACTICE Toronto

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## Previously Featured Article

### Revolutionary Approach Winning Converts Across Canada Update May, 2003

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*There has been so much increased interest in Collaborative Family Law since I first researched this article over a year ago, that I decided to return to my contacts across Canada and ask for an update.*

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Collaborative Family Law (“CFL”) may be single-handedly responsible for revitalizing the practice of family law in Canada. “Collaborative Law” began in the U.S., but has been increasingly embraced by lawyers in Canada as one of the newest and best options for alternate dispute resolution. Collaborative Law offers a non-adversarial resolution but requires lawyers to re-learn a career’s worth of behaviours to work with, not just for, their clients. It requires clients to actually participate in the resolution process themselves, open lines of communication with each other, and to resolve their differences creatively. This revolutionary approach is particularly appealing in family law, where shared responsibility for raising children forces parents to remain in touch for years after they separate.

Lawyers acting out the traditional role of gladiator gain little personal satisfaction in family law. Clients rarely express appreciation at the end of a bitterly fought court battle, no matter what the results, but are quick to share their dissatisfaction and disappointment if a case does not go well. Courts can seldom provide an acceptable long-term resolution for children’s issues. Aside from the tremendous costs, there is little accountability in the court process. The judge makes a decision based on the law and the parties and their children must live with it.

Adversarial behaviour, unfortunately, also tends to permeate traditional out-of-court negotiations. Lawyers are expected to follow instructions from clients who are often on an emotional roller coaster, unhappy and confused trying to protect their rights after separation. Ex-spouses may seldom even see or speak to one another. And chances are if they do speak, it may be only to share anger or hurt. If they agree to a 4-way meeting with their lawyers, it’s the lawyers who generally set the agenda and act as their clients’ mouthpiece. Lack of communication is cited as a main contributor to failed relationships; add to this lawyer-fronted negotiations and it may be no surprise that a

couple's ability to communicate after separation is at an all-time low. They part company with their lawyers armed with a legal agreement but no ability to deal with each other to work out parenting arrangements.

But, just as traditional lawyer-based negotiations are not always satisfactory, mediation presents problems as well, particularly when one partner has been dominant throughout the relationship. In mediation lawyers are normally sidelined, leaving clients to advocate for themselves with the independent mediator, who may or may not be trained to recognize when one partner is controlling the process. The partner better or more comfortable at presenting their position has greater bargaining power and this is likely to leave the other dissatisfied with the results.

CFL encourages ex-partners to find ways of communicating respectfully with each other to arrive at a solution that works for both of them - and their children. It will only work if the lawyers involved are properly trained in "interest-based" negotiation skills and are prepared to let go of their traditional control over the process – not an easy task. Unlike mediation, lawyers take part as coaches to assist their clients in their negotiations, but unlike traditional negotiations, the parties themselves must take ownership of these negotiations. This does not mean that lawyers can simply sit in the wings and leap back into adversarial mode if negotiations break down – quite the contrary. Lawyers must work ethically and co-operatively with each to ensure their clients are participating fairly in the process, including providing full financial disclosure; and if negotiations fail in CFL, both lawyers must withdraw and different lawyers must be hired by the parties to take the matter forward to court.

It is really no surprise that family law lawyers have enthusiastically welcomed the CFL approach. They fight on the front lines in family law battles and understand what it is like to be frustrated and worn down by the process. The bonus is, CFL not only provides more personal satisfaction and less stress for their clients, but the lawyers themselves also experience this same result. With the family law bar in British Columbia and Alberta leading the way, over the past three years CFL groups of like-minded family law lawyers have sprung up from coast to coast to coast. What follows is an overview of the amazing growth of Collaborative Family Law as word of its success spreads across Canada, shrinking court lists and rallying support from lawyers and clients alike.

### **British Columbia:**

**Vancouver, Victoria, Kelowna, the Fraser Valley and Prince George** all have active CFL groups, with interested lawyers in other areas looking for information. Nancy Cameron, one of the first lawyers to practice CFL in Canada, was co-founder of the CFL group in Vancouver in 1999. Nancy reports they currently have about 54 members

made up of lawyers and some mental health professionals, doing a lot of collaborative cases. The mental health professionals are a key component of the Vancouver group, which offers a complete multi-disciplinary model. The impetus to start the group came after Nancy met with Pauline Tesler in California. The founders of the Vancouver group have brought up U.S. CFL leaders Pauline Tesler, Peggy Thompson and Stu Webb, the U.S. founder of CFL. Vancouver continues to offer substantive training for the province. As of mid-July, 2002, approximately 200 lawyers and mental health professionals have received training in B.C. The Vancouver group has developed their own training materials as well as participation and retainer agreements and other client-centred materials. They also have their own website. To qualify for membership in this group, lawyers must complete 40 hours or about 5 days of mediation training plus a two-day course in Collaborative training. Accredited mental health and financial planner members have slightly different training requirements. Regular dinner meetings and case conferences help provide on-going education for members. Nancy reports that their membership has now reached a level where CFL can be offered as a real option for clients and a number of their members are doing only CFL. She and her co-trainer, Dr. Susan Gamache are also teaching a full term class at UBC law School In Collaborative law this fall, which will be open to Law students and psychology grads.

Chair of the CFL group in Victoria, Robert Klasssen reports that they have grown from 12 to 30 experienced family law lawyers in their group since they started about 2 ½ years ago. They initially had training in the Vancouver multi-disciplinary model and have combined this model with training from the “experts” in Medicine Hat. “Training and more training” is central to the group. The Victoria group has developed their own participation and retainer agreements. They have regular monthly meetings and are keen to do more in marketing CFL to family law clients. So far they have distributed a brochure to professionals involved directly in the separation and divorce process, and taken out a ½ page ad in the Yellow Pages with their phone number and their website. Their website also lists health and financial advisors who have taken CFL training.

The Okanagan Collaborative Family Law Group in Kelowna, B.C., according to Nancy Johnson, has been active for approximately 2-½ years, and has been able to share in some of the expertise offered by the Vancouver and Victoria groups, including contract precedents from Vancouver and a brochure precedent from Victoria. To date, Kelowna has a stable membership at about 20 lawyers, most of whom are members of the local CBA Family Law Section. They agree to take either a CLE Mediation Course or the 2-day CFL Course in Vancouver. Nancy reports that they hope to be able to offer training locally in future to work with “Divorce Coaches”. While waiting for more cases with formal CFL contracts to develop in Kelowna, some members of the group have been honing their CFL skills by applying these co-operative techniques during 4-way meetings and other negotiations.

**BULLETIN FROM B.C.:** The International Association of Collaborative Professionals (IACP) is holding it's 2003 networking conference in Vancouver from October 17<sup>th</sup> to 19<sup>th</sup>. This will provide a wonderful opportunity to meet collaborative professionals from across North America. For more information about the IACP go to their [website](#)

**Alberta:**

Each city in Alberta where CFL is being practised has incorporated its own non-profit association, and now a provincial organization has been formed with the support of local groups in Alberta and Yellowknife. They hope to consolidate their resources with common Yellow Pages ads, a toll-free number, brochures, client handbooks, etc. In the collaborative spirit, each of the local associations has, as much as possible, attempted to mirror the structure, criteria and objectives of the other associations. This includes sharing the same website and maintaining fairly similar contracts and membership requirements. Although very popular in Calgary and Edmonton, CFL has achieved overwhelming success in the smaller southern community of Medicine Hat. There are also groups being trained in **Lethbridge, Lloydminster, Red Deer, and Fort McMurray**, with smaller groups expressing interest. Collaborative Law is being taught at the Bar Admission Course and the Law Society in Alberta has even provided insurance rebates to lawyers who have completed CFL training.

Victor Tousignant, Chair of the **Calgary** group reports they are very active and membership over the last year has grown from 58 to about 70 members, representing about 1/3 of the Calgary family law bar. Qualifications are demanding – requiring 40 hours (about 5 days) of family mediation, 1 4-day advanced interest-based negotiation course, and a 2-day CFL course. Chip Rose, a well-known U.S. trainer, is reported to have said Calgary had the highest standards he'd seen for qualifications. Local people are offering the training, and Victor, who describes himself as “striving to become bilingual”, has also traveled to New Brunswick to speak on CFL to French-speaking lawyers. Most lawyers in Calgary continue to practice both CFL and regular family law, but a number have now completed from 12 to 15 CFL cases. While some cases have reportedly taken a bit longer to negotiate, most importantly, the results have held together – especially those with children involved. The bench in Alberta has thrown their support behind CFL as another means of alternate dispute resolution, with the Associate Chief Justice of the Court of Queen's Bench now providing that a one-page letter be served on divorcing parties in certain jurisdictions, urging them to consider CFL or mediation.

Marla Miller, a board member of the **Edmonton** CFL group reports that they started as a subcommittee of their local CBA Family Law Section and currently have about 45 members. Training requirements are similar to Calgary's: a CFL member must complete

40 hours of mediation training, 32 hours of interest-based negotiation training, and 16 hours of CFL training. While local people provide the mediation and negotiation training, currently CFL trainers still have to be brought in from outside the city. CFL has not only been approved as a litigation alternative covered in the province's Mandatory Parenting after Separation Course, but is also now taught in the Bar Admission Course.

In **Medicine Hat**, CFL leader and trainer Janis Pritchard reports that CFL has all but taken over their local family law bar. The drop in the demand on court time has been so dramatic that the province is looking at ways of promoting CFL in even more Alberta communities. Janis and her two partners in Palliser Conflict Resolution Inc. have trained and assisted groups in getting up and running all across Canada. Collaborative Law is now being practised in other areas than family, with continued reports of success. She fields calls daily from enthusiastic lawyers in other Canadian communities wanting training, hoping to replicate Medicine Hat's success. And, as if their local success wasn't enough, Janis and David Carter as well as Brad Hunter from Regina were invited down to Minneapolis last year by CFL guru Stu Webb to share their experiences with his group, the Collaborative Law Institute!

### Saskatchewan:

The President of Collaborative Lawyers of Saskatchewan Inc., Brad Hunter of Regina, actively promotes his organization's ambitious goal of making CFL the predominant method of resolving family law disputes in Saskatchewan, as well as an option for other areas of practice. So far, they appear to be on target. By July of 2002 they had offered training to about 80 percent of the province and approximately 100 lawyers (about 10 percent of the bar) were trained in CFL. The Saskatchewan CFL association requires its members to take 2 ½ days of interest-based negotiation training, 2 days of CFL, and to commit within 6 months to take 2 more days of advanced interest-based negotiation training. The **Regina** family law bar has been quick to embrace CFL as was **Saskatoon**, and the group now also has members trained in **Moose Jaw, Assiniboia, Lloydminster, and Prince Albert.**

Training follows along the lines of the Alberta model, including the Medicine Hat approach of permitting all lawyers to take the training and encouraging all clients to use CFL. Brad estimates that several Regina lawyers now have 5 or more CFL contracts with a couple handling close to 10 cases. Not surprisingly, Regina, like other cities where CFL has caught on, is already seeing reduced court lists. The group was assisted by a \$16,000 grant from their Law Foundation to help promote CFL, which had its first official "launch" to the public in October, 2001. The law Society is also looking at registering collaborative law as an area of practice. Brad's focus on getting the message out to the public helps explain their success. He worked with a local designer and writer

to prepare an up-beat but professional brochure that speaks to and not over the head of the average person. The brochure provides a toll-free number, mailing address, plus the address for a website to encourage the public to contact members of the group. In addition, Brad has prepared a practical “how to” primer for lawyers: “Starting a Collaborative Law Practice from Scratch”, sketches out in point form considerations and suggested approaches. Brad also offers to consult with others needing assistance setting up and marketing a CFL group. His group also has full-page Yellow Pages ads in many phone books. It’s no wonder Brad was invited down to Minneapolis by Stu Webb to talk about his approach to setting up a collaborative law practice.

### **Manitoba:**

Rhonda Hercus of **Winnipeg** is very involved in Manitoba’s Collaborative Law Group. She reports that to date they have about 90 lawyers who have taken CFL training in Winnipeg out of approximately 113 Family Law lawyers there. Approximately 45 also have taken conflict resolution training. Last October they had multi-disciplinary training from Nancy Cameron from Vancouver and other training sessions are planned for out-lying communities. Some lawyers now have practices comprised of 50% or more CFL. The association’s members have worked hard to promote CFL and to encourage more clients to choose this option and clients are now becoming quite aware of this option. The Manitoba group requires four days of conflict-resolution training and two days training in CFL, which to date has been provided primarily by trainers from outside the province. On-going educational programs for members are provided locally.

### **Northwest Territories:**

According to Elaine Keenan Bengts in **Yellowknife**, the concept of CFL has definitely been greeted with enthusiasm. Since virtually every lawyer who practices any significant amount of family law expressed an interest in training, they applied for and received funding for training from their government and Law Foundation. Since no training was available locally, the NWT Bar brought in the Medicine Hat group several times to provide their training, as well as some precedents. They started in June 2002 with their first group of lawyers trained in CFL. About 25 lawyers in various areas of practice have now taken training. The local family law bar is small, and initially it was anticipated this might present a challenge to make the CFL option practical for family law clients. Instead, now most family law lawyers are offering Collaborative Law.

## Ontario:

Ontario currently has a growing number of local areas with either formal CFL groups or interested lawyers who have taken CFL training. It is estimated that there are now well over 200 family law lawyers in the province with some basic CFL training. With the leadership of Margaret Opatovsky of the Niagara group, 10 of the 12 local groups so far are part of a provincial **Ontario Collaborative Law Federation**, which co-ordinates efforts for expansion and sharing of information on CFL, on-going training of members, promotion of public awareness, and develops and promotes professional standards. This Federation organized a most successful two-day conference last September and brought in U.S. CFL leaders Pauline Tesler and Chip Rose from California. Another such conference is planned for November of 2003. Compared to their western counterparts, the Ontario family law bar has been a bit slower to pick up on the CFL option. This can be explained in part by the larger population, but may also be due to the many non-court options currently available in the province. Even litigation has an imposed settlement focus through case management. The high standards of practice imposed by local CFL groups also means lawyers must be committed to put time aside from already busy practices to get up-to-speed on training before qualifying to practice CFL. Members are working hard to build a “critical mass” of CFL lawyers and clients in each area to ensure the option is viable. While a significant number of Ontario lawyers now have CFL training, they are spread out across the province and still represent a small percentage of the family law bar. There is also not likely to be a big demand for CFL until clients understand the benefits it offers. A province-wide public relations effort may be needed to get more of the public turned on to the advantages of CFL.

On the local level, the Hamilton-Burlington group has about 14 members, has been active for about 2½ years and is incorporated with a website.

London has a more informal group, which started about 4 years ago. A number of the original members were trained by Chip Rose in the spring of 2000. They also have their own website. They meet regularly, have developed standardized precedents and have marketed themselves so far through a brochure, a website, and an ad in the Yellow Pages.

The Niagara group has moved ahead quite rapidly. They now have standardized agreements and handouts and are close to completion of a brochure. Membership requires at least one level of training plus 5 years in the practice of law, and an undertaking to complete the second level of training within 2 years. New members must also be sponsored by an existing member. Niagara’s current membership is approaching 30. The group has a website and is putting together a “resource bank” of other professionals for referrals while at the same time talking up CFL in their

community. Taking advantage of their close proximity to the U.S., they have also formed contacts with lawyers practising CFL in Buffalo and Rochester.

The **Peel** group is organized with an executive and committee structure. They have been meeting regularly for about 2-½ years and continue to develop protocols. Membership is currently at about 16. The Peel group now offers associate membership to other professionals who assist in family law cases.

**Sarnia** has a small but dedicated group in their community of approximately 20 family law lawyers, who are committed to developing a CFL practice. They still hope to attract more lawyers as the public becomes better informed about the benefits of the CFL process as an alternative to litigation. They have considered joining forces with some of their U.S. colleagues across the river for training and mutual support.

**Waterloo Region** (Cambridge, Kitchener and Waterloo) has recently formed an association with 49 lawyers, many of whom have now had at least 2 days of basic training. This group is interested in working with other professionals.

The **Nippissing** group in North Bay has been active for approximately two years and was up to 15 members at last count. The group has standardized precedents, a discipline policy, and a brochure. Referrals between other professionals, as well as TV and newspaper coverage have helped give them some public exposure.

**Simcoe County** ( Barrie) region is another one of the newer groups still developing.

**Ottawa** is incorporated with an executive structure and committees. They now have 35 members. This group is very active and went public with CFL through a press launch over a year ago.

Two other groups have recently formed, one in **Durham Region** (Newcastle, Pickering and Whitby) with 11 members to date, and one in **Quinte** (Bay of Quinte, Belleville, Trenton and Brighton) with 12 members to date. Both these new groups already have websites.

Last, but not least, the **Toronto** group, in existence now for 3 years is incorporated, with a Board of Directors and committees, and has developed precedent materials. Much effort was devoted to developing the structure and criteria for training and membership. Membership is currently approaching 50, with most having completed level I training and many having completed level II and completed several cases. The group is focusing their efforts on attracting CFL cases by publicizing CFL and working on standards of practice and training. The governing Board holds monthly meetings in addition to regular dinner meetings and brown bag lunch meetings offered to members

to discuss training and mentoring. The Group is currently considering producing a video for distribution to the public and clients interested in learning more about CFL. Publicity includes broad circulation of a brochure and a website. The Toronto website (this website) is focused primarily on the public and currently contains CFL principles, information on the Participation Agreement, questions and answers on CFL, information on events, articles, a list of members designated by their qualifications, and links to other CFL-related sites across Canada. The large family law bar and size of the population in Toronto still presents special challenges. The group has also attracted a variety of other professionals who work with family law clients to it's dinner meetings and brown bag lunches and is considering a more formal association with these mental health and financial professionals.

### **Quebec:**

With the support and encouragement of Justice L'Heureaux-Dube (recently retired from the Supreme Court of Canada), a subsection of the provincial CBA Family Law Section has introduced and is promoting CFL in Quebec. Plans included inviting CFL lawyers from B.C. and the U.S. in May of this year to the Quebec Bar Association Congress to speak about CFL. Since then training has been provided and more is planned.

### **New Brunswick:**

Collaborative Law is just starting in New Brunswick with a steering committee now formed and an aim to have training shortly. Local Family law lawyers hope to work together with their fellow lawyers in Nova Scotia and P.E.I.

### **Nova Scotia:**

In 2001 when members of the family law bar initially got together to discuss starting a CFL group, they had 25 people expressing interest within 3 weeks, including a number of senior members of the bar. These 25 people are now fully trained and qualified. Their association was registered in early January of 2002 with the Registry of Joint Stock Companies. Training generally follows the Calgary model with approximately 5 days of mediation training, 2 days of negotiation training and 2 more days of CFL training. The group also anticipates adding a continuing education requirement in the near future. In addition to the **Halifax** family law bar, they have attracted participants from outside the area. With the assistance of CFL groups from other parts of Canada, Nova Scotia members are working on bylaws, further training, and promotion. The group began to offer CFL to clients over a year ago and now has a Yellow Pages Ad, brochure and website.

### P.E.I.:

P.E.I. Family law lawyers had their first 3 day training session this February from Janis Pritchard and David Carter of Medicine Hat. The first session filled up quickly leaving others on a waiting list for training. A further 2 day session on interest-based negotiation training will be offered shortly and is enthusiastically anticipated by lawyers, now starting to offer CFL to their clients. Despite P.E.I.'s bar of about 140 lawyers in total traditionally enjoying free CLE, Ron Profit reports that lawyers have not been deterred by a charge for CFL training. The Law Foundation of P.E.I. agreed to contribute \$200.00 toward the training fee for each lawyer.

### Newfoundland:

Interest in CFL has been expressed by the local bar following a presentation on CFL from Nancy Cameron of Vancouver; however training has not yet been scheduled.

**Note:** *The information in this up-dated article is as current as possible as of May, 2003. I would like to express my appreciation to everyone who contributed to the original article and this update from across Canada. Any feed-back, further up-dates or additional information on other CFL groups in Canada would be welcomed by e-mail to: <mailto:mjhuddart@dranoffhuddart.com>.*

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