



peel halton  
collaborative

*E-Kit*



A Constructive and Dignified Approach to  
Separation and Divorce



## 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.peelcollaborative.com](http://www.peelcollaborative.com)

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



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, certified business valuers, 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

# Divorce: Collaborative vs. Litigation



|                                      | Collaborative   | Litigation   |
|--------------------------------------|---|--|
| <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*



When a divorcing couple owns a business or one spouse holds an interest in a business, the division of property may become far 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 Valuators' 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 Valuators' 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 clients' 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.



## My Dream Divorce

A growing number of couples – and lawyers – are deciding to do divorce differently

For years before his 1987 divorce, Mike Brown was a drinker – a bad drinker who could flip from popular jokester to angry bully in less time than it takes to down a beer.

Even so, his wife Megan loved him, his big heart, his friendship and his wacky sense of humour. But after a few years, even those lovable traits weren't enough. Megan, who had a daughter with Mike and another from her first marriage, asked for a divorce.

“When you're trying to have a career, raise your children and deal with all that,” the 53-year-old Halifax woman recalls, “you get to a point where you think, ‘I can't do this anymore.’”

By anyone's reckoning, their split should have ended in a painful, brawling divorce.

Incredibly – no, miraculously – it didn't. Each of them had experienced painful divorces before their own, so Megan and Mike were determined that this relationship would not ruin their family. The couple threw societal expectations out the window and did their divorce differently: They lived together as roommates in a three-bedroom townhouse in Calgary, so together they could raise their daughter Bethan. What's more, the parenting partners – for lack of a better term – weathered stranger waters still when Megan fell in

love with and married Mike's brother Bill 12 years later.

Throughout it all, the former couple maintained just one focus.

“Mike and I were totally committed to our child. It was our number one priority,” says Megan. “We'd both been through bad divorces. From those experiences, we learned what we didn't want. And we didn't want our daughter to suffer.”

Noble sentiments indeed, but the Megan and Mike Brown story is far from isolated. According to *Reconcilable Differences* (Second Story Press), a new book by Cate Cochran, a producer on CBC Radio's Sunday Edition, more and more of the 38 percent of Canadians who go their separate ways are fighting the urge to fight it out to the bitter end. Instead they're choosing to craft their own – and often unconventional – arrangements. Other times they work through Collaborative Family Law, a rapidly expanding program in family law practice introduced to Ottawa in 2002 that neither bleeds couples financially nor leaves children caught like deer in traffic.

“The marriage, the romance may end, but the family doesn't,” says the 52-year-old Cochran, a veteran of her own remarkable divorced-but-

cohabiting arrangement. “It’s incumbent on us to build a strong family even if it’s shaped differently.”

How different is different? Plenty. One couple Cochran interviewed decided to stay in the family home; the husband just shifted to the attached granny flat. He supported them financially and, after the children moved out, the pair sold the house and went their separate ways.

An Ottawa man who came out as gay to his wife after nearly a decade of marriage simply moved into a downstairs bedroom. Although the wife was initially devastated, they now celebrate the anniversary of their divorce every year.

Shortly after Cochran’s marriage ended, she and her ex bought a four-plex in Toronto, rented out two units and moved into the other two. Their children ranged freely from one unit to the other while Cochran and her ex spoke daily, often sitting on the stairs between their apartments to discuss school projects, parenting and meal schedules.

Given the emotional maelstrom that accompanies failed relationships -- hurt, guilt, grief, vindictiveness, remorse and anger -- divorces that move beyond amicable into happily-ever-after seem impossibly rare. Not so, says Cochran. With a shared agenda of maintaining financial stability and emotional integrity for the children, the “divorce dissenters” are stepping up to the challenge. “It’s the same rules as any good marriage. You have to be respectful of each other,” says Cochran. “You have to make compromises.”

Such notions are also at the heart of Collaborative Family Law. First developed by a group of lawyers in Minnesota, CFL lawyers are specially trained to tackle separation and divorce

from a compassionate and co-operative angle.

They meet with separated spouses to define and negotiate issues in a respectful, controlled environment.

“Every CFL case starts with an agreement,” says Anne Moxley, a CFL lawyer in rural Ottawa who limited her practice to out-of-court, negotiated settlements more than a decade ago after witnessing the devastation caused by standard divorce procedures. “It sets out the rules of the game, and that means civility as well as procedure. The lawyers agree they won’t take it to court later; disclosure of assets doesn’t become a digging expedition. Basically, we’re trying to keep things on the rails, moving forward and building up rather than tearing down.”

Along with the agreement, lawyers can bring in social workers, psychologists and financial planners to help coach the divorcing couple on everything from their RRSPs to the children’s psychological well-being.

“When you split up, it can be hard to see where things are going,” says Moxley. “If you have a financial specialist come in with a spreadsheet and explain where you are going to be in 20 years, it takes the fear out of it. It’s not a dissolution of a family, it’s a restructuring of it.”

So far, it’s working. According to Heidi Ruppert, a CFL specialist at the Ottawa law firm MDR Associates, the focus on negotiation and communication has turned potentially acrimonious divorces into speaking-terms arrangements.

“I had one client support the spouse through rehab, not pulling any moves, so they could work toward 50-50 parenting,” she says. “Some clients live in the same neighbourhood so the kids are close. Many couples initially have a bird’s nest

arrangement (in which parents, not children, move in and out during access weeks). The key ingredient? People have to really get a grip on their pain. They have to have the patience, too, to understand that the party being left needs some time to catch up emotionally.”

For Megan, Mike and others forging their own path, lawyers are not always necessary. Although the couple briefly consulted a paralegal, “we did everything ourselves,” she recalls. “It was a dream divorce, if such a thing is possible. We put the issues we had between us to one side.”

One motivation was avoiding the kind of messy split Mike experienced with his first wife; the Browns say they spent \$25,000 attempting to gain access to Mike’s young son. “But his divorce is the norm,” Megan says. “So I’m a little jaded with the whole court system.”

The one thing she isn’t cynical about is her own split. After the couple decided to end their relationship, Mike left Calgary for Nova Scotia to help him recover emotionally from the split. But when Megan found a good job 18 months later that involved travel, she made him an offer

“I knew how much he missed our daughter,” Megan recalls. “So I said, ‘Have you thought about returning?’ He moved back within three weeks.”

Although his presence in Megan’s spare room was theoretically temporary, the former couple quickly fell into a routine that even involved Mike moving with the family when Megan took a job in Saskatoon. Strangely enough, although his drinking and depression were still an issue, Mike respected the new dynamic and would stay at a friend’s house if he had been drinking or was depressed.

“Your expectations change along with the

circumstances of your relationship,” Megan says. “I had a more realistic view of what he was capable of and he felt the same way about me. I had no expectation that he would look after my needs; that wasn’t his job anymore. But I did have expectations of him as a roommate that he met and exceeded.”

Years later, when Mike’s brother Bill showed up one night after driving straight from Halifax to escape his own difficult divorce, the family expanded. Megan would stay up late listening to Bill’s problems and discussing life. Eventually, they fell in love, married in 1999 and now live in Halifax.

“This whole thing has made me a better person,” Megan says of her friendship with Mike, who still lives out West. “I’m really proud of the relationship I have with him, and how we took something so cruel and did things differently.”

But is society ready for dream divorces?

It depends on whom you ask.

“Definitely, there is exponential expansion in this area,” says Moxley. “Clients are looking for it. People are looking for a better way to move on.” On the other hand, divorcing co-operatively puzzled many of Cochran’s friends.

“People think you’re either foolish or naïve,” she says. “There were skeptics who assumed that one of us was being fooled. Or they’d be perplexed. We didn’t have the answers, there was no model, so we didn’t know what we were facing. It was literally feeling our way along the walls of a dark room.”

Cochran says the concept of a happy divorce troubled some, but many more were confused by how she and her ex developed a more honest, communicative and co-operative relationship than

when they were together.

“People have asked us why we didn’t just stay married, even though it wasn’t working on other levels,” Cochran admits. “It was unorthodox, but it made sense to us.”

Whether or not such queries are the result of our Noah’s Ark society that only understands relationships in pairs, Cochran says the key was to trust her instincts. “You conferred and trusted each other, and you adapted as you went along. We had friends who had an incredible food fight of a divorce and we knew that’s not what we wanted for ourselves.”

Recently, Cochran’s 19-year-old son left home for the first time. “I asked him about his childhood, five years of which was with this arrangement. He just said to me, ‘Mom, it was a really happy childhood.’ If we can give our children just that,” she says, “then it’s worth every moment of struggle.”

*Julie Beun-Chown is a national magazine writer living in Ottawa.*

## How to have a dream divorce

1. “Sit at the kitchen table and talk about what matters most, which for most people is the happiness and stability of the new family structure,” says Cate Cochran, author of the new book *Reconcilable Differences*. “Talk about what you can and can’t do. Craft an arrangement that you can live with and never mind what the rest of the world thinks about it.”
2. Get good advice on financial issues, which can be very complicated depending on your circumstances.
3. Show some respect. “You can’t belittle or degrade the other person,” Cochran says. “Don’t fight in front of the kids or drag them into disagreements. We all slip and let our anger take hold, but you have to learn to apologize and start over.”
4. Create an equitable schedule and division of financial responsibilities. “You have to figure out who’s going to pay for things like skating lessons. It’s pretty basic stuff. Draw up a list and keep talking to each other. Negotiate. The same goes for a work schedule and time off. We both had long-distance relationships, so we needed weekends off and we had to work around that.”