

Okanagan Collaborative Family Law Group

Collaborative Practice Lawyer's Participation Agreement

(If Children are included, include 5)

BETWEEN:

Spouse 1

AND

Spouse 2

("the Parties")

AND THEIR LAWYERS:

Bev Churchill

AND

Lawyer 2

(the "Lawyers")

The Parties and the Lawyers have chosen to enter into this Agreement to use the principles of the Collaborative Process to settle the issues arising from the dissolution of their relationship.

1. Purpose

The primary goal of the Collaborative Process is to settle the outstanding issues in a non-adversarial manner. The Parties aim to minimize, if not eliminate, the negative economic, social and emotional consequences of protracted litigation to themselves and their family. The Parties have retained Collaborative lawyers to assist them in reaching this goal.

2. Commencement of Collaborative Process

The Collaborative Process begins with the first of the following:

- a. Signing of the Coach's Participation Agreement, or
- b. Signing of the Lawyer's Participation Agreement.

3. End of the Collaborative Process

The Collaborative Process ends when the first of the following events occurs:

- a. A party or a lawyer gives notice of withdrawal from the Collaborative Process (as set out in paragraph 13 or 14) unless the party gives notice of intention to proceed as a Collaborative Practice matter and retains a new Collaborative Practice lawyer within 30 days, and the new Collaborative Practice lawyer executes the participation agreement;
- b. A lawyer terminates the Collaborative Process under paragraph 15;
- c. A party commences a contested court proceeding (not including filing a notice of family claim under paragraph 11 by agreement), or
- d. The parties sign (before witnesses) a final separation agreement.

4. Communication

The Parties intend to communicate effectively with each other to efficiently and economically settle the dissolution of their relationship. Written and verbal communications will be respectful and constructive and will not make accusations or claims not based on fact.

It is agreed that communication during settlement meetings will be focused on the economic and parenting issues in the dissolution and the constructive resolution of those issues. The Parties are encouraged to discuss and explore the interests they have in achieving a mutually agreeable settlement, and each is encouraged to speak freely and express his or her needs, desires, and options without criticism or judgment by the other. Although the Parties should be informed by their lawyer about, and may discuss with each other, the litigation alternatives and possible outcomes in court, neither Party nor the Lawyers will use the threat to withdraw from the process or to go to court as a means of achieving a desired outcome or forcing a settlement.

5. Children's Issues

In resolving issues about sharing the enjoyment of and responsibility for any children, the Parties understand the obligation imposed on them pursuant to section 37 of the *Family Law Act* and agree to make every effort to reach amicable solutions that consider only the children's best interests. The Parties agree to act quickly to resolve differences related to the children to promote a caring, loving and involved relationship between the children and both parents. The Parties acknowledge that inappropriate communications regarding their separation can be harmful to their children. They agree that settlement issues will not be discussed in the presence of their children, or that communication with the children regarding these issues will occur only if it is appropriate and done by mutual agreement, or with the advice of a child specialist. The Parties

agree not to make any changes to the residence of the children without first obtaining the written agreement of the other Party.

6. Participation with Integrity

Each participant shall uphold a high standard of integrity, and shall not take advantage of inconsistencies or miscalculations of the other, but shall disclose them and seek to have them corrected.

7. Disclosure of Information/Negotiation in Good Faith

The Parties and the Lawyers agree to deal with each other in good faith. The parties agree that during the Collaborative Process they shall fully disclose all assets, liabilities, and income information. They shall promptly provide all necessary and reasonable financial and other information and documents requested of them and promptly update information that has materially changed at any time during the process. No formal discovery procedures will be used unless specifically agreed to in advance by parties.

The Parties acknowledge that by using informal discovery, they are giving up certain rights, for the duration of the Collaborative Process, including the right to formal discovery, formal court hearings, restraining orders and other procedures provided by the adversarial legal system. They give up all these measures with the specific understanding that both Parties make full and fair disclosure of all assets, income, debts and other information. The Parties acknowledge that participation in the Collaborative Process, and the settlement reached, is based upon the assumption that both Parties have acted in good faith and have provided complete and accurate information to the best of their ability. The Parties agree to provide sworn statements making full and fair disclosure of their income, assets and debts, if requested.

8. Cautions and Limitations

In choosing the Collaborative Process, the Parties understand that there is no guarantee that the process will be successful in resolving their case. They understand that the process cannot eliminate concerns about any disharmony, distrust or irreconcilable differences which have led to the current conflict. While intent on striving to reach a cooperative solution, success will ultimately depend on our commitment to making the process work. The Parties understand that they are still expected to assert their respective needs and interests and their respective lawyers will help each of them do so.

The Parties further understand that while the Collaborative lawyers share a commitment to the process described in this document, each of them has a professional duty to

represent his or her own client, and is not the lawyer for the other party.

9. Experts and Consultants

When an expert is needed, the Parties will use only neutral experts. This includes, but is not limited to, business valuers, appraisers, and any other experts (the "Expert"). The Parties will agree in advance of retaining the Expert as to how the costs of the Expert will be paid. The Expert report shall be covered by the confidentiality clause of the Participation Agreement and shall **not** be used in any subsequent litigation (unless the parties agree otherwise, which agreement needs to be in writing). This includes all Expert reports that were commenced during the Collaborative Process, including those reports commenced during the Collaborative Process and completed after the Collaborative Process ends.

Neither party will bring on an application to compel production of any Expert report commenced in the Collaborative Process.

10. Divorce Coaches, Child Specialists, and Financial Planners

When appropriate and as needed, the Parties will use the services of one or more of the following professionals: Divorce Coaches, Child Specialists, and Financial Planner (Collectively referred to as "the Collaborative Professional". When a Collaborative Professional is engaged, the Parties agree that the Collaborative Professionals and the Lawyers may engage in whatever discussions necessary for resolution of the case. In the event that the Collaborative Process comes to an end, the Confidentiality provisions as set out in Paragraph 16 of this Agreement apply to the Collaborative Professionals.

11. No Court Intervention

Unless otherwise agreed, while the Parties are in the Collaborative Process, no notice of family claim will be filed or served, nor will any other motion or document be prepared or filed which would initiate court intervention.

12. Disqualification by Court Intervention

The Parties understand that their Collaborative Lawyers' representation is limited to providing services within the Collaborative Process. Thus, while each lawyer is the advisor of his or her client and serves as the client's representative and negotiator, the Parties mutually acknowledge that both lawyers, and any one in each lawyer's office or firm, will be disqualified from representing them in a contested court proceeding against the other spouse.

13. Withdrawal of Party from Collaborative Process

If a Party decides to withdraw from the Collaborative Process, prompt written notice

shall be given to the other party through his or her lawyer. Upon termination of the Collaborative Process by a Party or a lawyer, there will be a thirty (30) day waiting period (unless there is an emergency) before any court hearing, to permit the parties to retain new lawyers and make an orderly transition. All temporary agreements will remain in full force and effect during this period. The intent of this provision is to avoid surprise and prejudice to the rights of the other Party. It is therefore mutually agreed that either Party may bring this provision to the attention of the Court to request a postponement of a hearing.

If a Party wishes to withdraw from the Collaborative Process with their current lawyer, but retain a new lawyer to continue with the Collaborative Process, the Party shall give prompt written notice to the other party through his or her lawyer, of their intention to withdraw and obtain a new lawyer. The new lawyer shall execute a new Collaborative Participation Agreement within 30 days of the Party giving notice. If a new agreement is not executed within 30 days, then the other party shall be entitled to proceed as if the Collaborative Process were terminated as of the date written notice was given.

14. Withdrawal of Lawyer from Collaborative Process

If either lawyer withdraws from the case for any reason except those set out in paragraph 15 herein, they agree to do so promptly by a written notice to the other party through the other lawyer. This may be done without terminating the status of the case as a Collaborative case. The party whose lawyer has withdrawn may elect to continue in the Collaborative Process and shall give prompt written notice of this intention as well to the other party through his or her lawyer. The new lawyer shall execute a new Collaborative Participation Agreement within 30 days of the lawyer first giving notice. If a new agreement is not executed within 30 days, then the other party shall be entitled to proceed as if the Collaborative Process ended as of the date the first written notice was given.

15. Termination of Collaborative Process

A Collaborative Lawyer must withdraw from the Collaborative Process in the event they learn that their client has withheld or misrepresented information and **continues to withhold and misrepresent such information**, or otherwise acted so as to undermine or take unfair advantage of the Collaborative Process. The Lawyer withdrawing will advise the other lawyer that he or she is withdrawing, and that the Collaborative Process must end.

16. Confidentiality

All communication exchanged during the Collaborative Process will be confidential and without prejudice. For the purposes of this paragraph, the confidentiality provisions apply to the communication involving the lawyers commencing with the signing of the lawyer Participation Agreement. For the purposes of this paragraph, the confidentiality

provisions apply to the communication involving the divorce coaches with the signing of the coaching participation agreement or the lawyer's participation agreement, whichever Participation Agreement is signed first. If subsequent litigation occurs, the Parties mutually agree:

- A. that neither Party will introduce as evidence in Court information disclosed during the Collaborative Process for the purpose of reaching a settlement, except documents otherwise compellable by law including any sworn statements as to financial status made by the parties;
- B. that neither Party will introduce as evidence in Court information disclosed during the Collaborative Process with respect to either Party's behaviour or legal position with respect to settlement;
- C. that neither Party will ask or subpoena either lawyer or any of the Collaborative Professionals to Court to testify in any court proceedings, nor bring on an application to discover either lawyer or any of the Collaborative Professionals, with regard to matters disclosed during the Collaborative Process;
- D. that neither Party will require the production at any Court proceedings of any notes, records, or documents in the lawyer's possession or in the possession of one of the Collaborative Professionals;
- E. the verbal agreements, concessions or statements of any kind whatsoever which may be made during the Collaborative Process are confidential and without prejudice; and
- F. the Parties agree that these Guidelines with respect to confidentiality apply to any subsequent litigation, arbitration, or other process for dispute resolution.

The confidentiality clause does not apply in the event that a Party or Collaborative Professional is obligated by law to report to the Ministry of Children and Family Development information arising out of the collaborative process which gives the party or Collaborative Professional reasonable grounds to believe that a child is or may be in need of protection.

17. Rights and Obligations Pending Settlement

While the parties are in the Collaborative Process neither party will unilaterally

- A. dispose of assets;
- B. change a beneficiary designation in a will, life insurance policy, pension, RRSP or other investment;
- C. alter any other provisions in insurance policies, pensions or other investments, or health plans (medical, dental or extended health);

- D. move the residence of the children;
- E. sever any joint tenancy on property held with the other party; or
- F. incur additional debts for which the other party may be responsible.

18. Enforceability of Agreements

In the event that the Parties require a temporary agreement during the Collaborative Process, the interim agreement will be put in writing and signed by the Parties and witnessed. The written agreement is enforceable and, at the end of the Collaborative Process, may be presented to the court as a basis for an Order, which the Court may make retroactive to the date of the written agreement. Similarly, once a final agreement is signed, if a Party should refuse to honor it, the final agreement may be presented to the Court in any subsequent action. Only written agreements signed by the parties and witnessed shall be enforceable in a court of competent jurisdiction. Verbal agreements, concessions or statements of any kind which may be made during the Collaborative Process are unenforceable, confidential and without prejudice as outlined in Paragraph 16.

19. Suspension of Limitation Period

The parties acknowledge that:

- A. The *Family Law Act* requires that a party must start a proceeding for an order to divide family property, debt or a pension, or for an order for spousal support, no later than 2 years after a divorce order (or an order declaring the marriage to be a nullity) is granted or 2 years after the date of separation (for parties living in a marriage-like relationship).
- B. Under s. 198(5) of the *Family Law Act*, the limitation period set out in paragraph A is suspended from the beginning of the Collaborative Process through to the end of the Collaborative Process. When the Collaborative Process ends, the running of the limitation period recommences.

20. Acknowledgement

Both Parties and their lawyers acknowledge that they have read this Agreement, understand its terms and conditions, and agree to abide by them. The parties have chosen the Collaborative Process to reduce emotional and financial costs, and to

generate a final agreement that addresses the issues arising out of the separation. They agree to work in good faith to achieve these goals.

Dated: _____

Dated: _____

Spouse1
Address:

Spouse 2
Address:

Lawyer for Spouse 1
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