

Bev Churchill



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Collaborative Family Law

Collaborative Family Law is an interests-based process for the resolution of disputes in which the participants are committed to the creation of a resolution without going to Court.

It evolved for use in family law matters as a result of growing discontent and dissatisfaction with the destructiveness created for families and relationships by the combative approach inherent in adversarial litigation in the Court-oriented approach.

Let me share two short stories.

- The first goes back many years when I was a junior lawyer. A senior family lawyer observed that he saw the *system* of family law as a form of *pension*. I asked the lawyer to explain. He said that in his observation, when a lawyer acts for a client who has children, there is a very strong probability that the lawyer will continue to act for that client for as long as the children are *children of the marriage or relationship*, (namely, until the age of 19 years and often beyond). What I think he was saying is that the system perpetuated disputes by not assisting the spouses and parents to work toward managing their own disputes.

- The second story is my “13 Court Order” story—trumped by another lawyer who recently described a 50 Court Order story. Many clients and colleagues have heard this story over the years. It is the situation of a potential new client who came to see me to assist in resolving a custody and access dispute. The client had been in the Court system since the child was 6 months of age. At the time, the child was 6 years of age. The Court had made 13 Court Orders in relation to this child.

While there are certainly exceptions, many clients want what is *fair*. They want what is *reasonable*.

The parents were still in dispute. The client was desperate for another Court Order to “fix” the dispute. The obvious question for this client was “what makes you think the 14th Court Order will do what the first 13 Court Orders have not?” The client was so distraught and focused on the dispute and how to afford more litigation that the question could not be fully heard or understood.

Those stories are disturbing but true! They are stories that need to be told. All family lawyers have

them. The implications for families need to be understood because those types of situations (and many other similar or worse situations) have long-term, costly, and negative consequences.

For many individuals going through a separation, the reason to see a lawyer is to seek information and guidance on how to proceed with their separation. What are their rights and obligations, how best to deal with the needs and interests of their children, and what approach should be taken to address those issues?

While there are certainly exceptions, many clients want what is *fair*. They want what is *reasonable*. Clients are looking for guidance and direction on how to **resolve** matters in the most efficient, cost-effective, and nonacrimonious manner possible.

That is not to say lawyers don't have clients who make unrealistic demands, as if they have no spouse whose interests, concerns, or rights need to be considered in the division of family property, debts or income, or even parenting, or clients who behave in a manner that suggests they want to make the separation experience worse than it ought to be.

The reality for those clients is that unrealistic demands will not be achieved. The clients will spend a lot of money along the way on legal costs associated with their campaign.

There will be no “winners” and it will be an extremely difficult process for all involved, particularly the children. That approach does not assist the parents to continue together to co-parent their children or to work on the difficulties that will arise in their future as the family transitions through the separation and divorce.

The situation can begin to build a dependency relationship on the family lawyers to address the inevitable disputes that arise in their parenting through a combative approach.

The fact of the matter is that the couple will be connected together through their children forever!

The questions for each spouse are

- how do they want that relationship to be for themselves and for their children, and
- how can they make the situation better?

In British Columbia, approximately 97 percent of Court cases settle prior to a trial. Once Court proceedings are commenced, however, the parties are expected to follow Court procedures and rules. That includes drafting documents and particular process steps designed to formalize and streamline the Court process.

Naturally, each of these steps has costs associated with it. The Collaborative process starts from the assumption that most cases will settle and do not need the formal process steps designed for litigation. What people commonly need to assist them in settling matters is negotiation support, legal advice, full disclosure, sufficient communication skills, and a safe and respectful negotiating environment.

Those are the components used by collaborative professionals to help clients negotiate in the collaborative process.

The new *Family Law Act* is a great start toward a fundamental shift. It defines “family dispute resolution” as “a process used by parties to a family law dispute to attempt to resolve one or more of the disputed issues outside of Court... .”

It includes, “Collaborative Family Law,” “Parenting Coordination,” “Mediation,” and “Arbitration.” This legislation is a clear statement of the intention to encourage an out-of-Court approach to the resolution of family law matters. It imposes an obligation on lawyers to discuss with their client the availability of these out-of-Court processes.

It also imposes an obligation on the parties to attend one of the processes defined as a *family dispute resolution*. It authorizes the Court to compel a party to attend such a process.

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These changes are formal, fundamental, and significant for the way in which family law matters are addressed in British Columbia.

Those changes are particularly significant for family lawyers who have focused on the Court system to determine the outcome of their cases. For those lawyers whose focus has been on the resolution of family matters through out-of-Court processes, however, the changes incorporated in the *Family Law Act* are refreshing, reassuring, and absolutely positive!

“Collaborative Family Law” is a resolution-oriented process. Each party has his or her own lawyer as an advocate who supports the party through the negotiations. Collaborative lawyers are trained in both the Collaborative process and mediation; they use those skills to assist the parties in negotiations without being confrontational. The negotiations are respectful, supportive, considerate, and constructive.

The Collaborative process also has the option of clients retaining a financial specialist and/or mental health professionals (known as coaches), including child specialists, depending upon the parties’ particular needs.

It is a commitment to work together to achieve a resolution of the issues involved in the separation without resorting to a third party decision-maker. The process is designed to allow for the exploration, consideration, and discussion of what is really and truly important to each spouse as well as their family for the creation of options and the development of a thorough and durable resolution and agreement.

The spouses are encouraged to consider their own future as well as that of their spouse and their family.

They are invited to consider questions such as ***will you each be able to***

- attend your daughter's soccer game;
- sit together at your son's hockey game;
- attend your daughter's high school graduation; or
- be there for your son and daughter at their weddings or the birth of your first grandchild?

The professionals—the lawyers, coaches, and financial specialists who work within the Collaborative process—are committed to work together (either at the same or different times) with each other.

- They work with the spouses to strive to reinforce the positive aspects of the family.
- They assist with the common challenges involved in many separations and work to overcome those challenges to achieve a resolution.
- They assist to create an understanding of the financial aspects of the separation for the creation of financial options.
- They encourage and assist in the improvement of those aspects within the family that are not working so well.
- They work to seek improvements in the relationship between the participants.

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Collaborative lawyers and professionals have extensive training and experience. There are hundreds of Collaborative "Practice Groups" throughout the world, formed to encourage the development and support for the Collaborative process.

In British Columbia, there are Practice Groups

- in the Okanagan, www.collaborativefamilylaw.ca,
- in Vancouver, www.collaborativedivorcebc.com,
- in Victoria, www.collaborativefamilylawgroup.com, and
- in Nanaimo.

In addition, the BC CollaborativeRoster Society (www.bccollaborativerostersociety.com) was established to

1. assist the public to obtain information about Collaborative Practice, as well as access a roster of professionals who are trained, experienced, and committed to excellence in Collaborative Practice, and
2. further the growth of high-quality Collaborative professionals through training and support.

On the international level, the International Academy of Collaborative Professionals (IACP:



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www.collaborativepractice.com) has thousands of members throughout the world and is an incredible resource for Collaborative Professionals and the public. It hosts two significant training opportunities for professionals each year.

Family lawyers are in a unique position of having experienced hundreds, perhaps thousands, of separations. They have seen the good separations. They have certainly seen the bad separations. A family lawyer learns from those experiences and that can make such a difference to the client; the couple as individuals and as parents; and the entire family.

For those family lawyers who practise outside of the Court system and within the Collaborative process, there is confidence that there are fewer disputes between the spouses. If there are disputes, they are often far less intense and the spouses are better equipped to address their own disputes in the future if they occur. If there are disputes the spouses cannot manage to resolve by themselves, they will come back to the Collaborative process to help resolve them. ▲

Bev Churchill practises as **BEV CHURCHILL FAMILY LAWYER** and the Okanagan Settlement Centre. Bev is a Collaborative lawyer, Mediator, Parenting Coordinator, and Arbitrator. She is Chair of the Okanagan Collaborative Family Law Group and is on the Rosters of the BC Collaborative Roster Society, Mediate BC – Family Roster, the Parenting Coordination Society, and the Hear the Child Society. She is also qualified as a Mediator, Parenting Coordinator, and Arbitrator through the Law Society of British Columbia. She serves on the Board of Directors of the BC Collaborative Roster Society, the Hear the Child Society, and a number of Committees within each Society. She also serves on Committees with the Okanagan Collaborative Family Law Group and the Parenting Coordination Society.

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