

## THE TAO OF SEPARATION & DIVORCE

or

**“Free at last, free at last, thank God almighty we are free at last”**

- Dr. Martin Luther King, Jr.

We will start with two premises. The first: conflict is an inevitable part of life. The second: all relationships eventually come to an end (*e.g.*, death, divorce). How you approach and deal with the conflict that inevitably comes at the end of relationships speaks more about who you are as a person than perhaps any other single aspect of your life. Conflict is, indeed, one of the significant challenges of life.

Conflict can take many forms and covers a vast spectrum from simple disagreements over what to eat for dinner through to modern litigation (*i.e.*, thermonuclear warfare). For our purposes, conflict is a noun meaning: A state of disharmony between incompatible or antithetical persons, ideas, or interests; a clash.

When two countries are involved in conflict they often act as pre-pubescent boys who can find no better conflict resolution methodology than a good old fistfight – which, if one is a country, means war! War is the immature solution. Countries that resort to war act no better than spoiled and immature children. To wage war reveals a childish inability to avoid the schoolyard fight. The results of “war” speak for themselves - destruction and wasted resources. Modern family law litigation is on the same end of the spectrum of conflict as full-scale international war; the difference being only one of scope. When you wage “war” with your spouse the results of the conflict – emotional turmoil and wasted resources (*i.e.* lots and lots of money thrown away) – will be borne not only by you and your spouse but also your children.

You know or ought to know that fighting is an immature response. Undoubtedly, you try to teach your children not to solve their problems through fighting! If you don’t let your kids go at each other hammer and tong then why would you take that very approach when separating with your spouse?

When it comes to resolving conflict and certainly when it comes to resolving marital conflict, one should aspire to be better and do better than war-mongering countries or schoolyard bullies. One should aspire to approach conflict in a mature, thoughtful and effective manner.



Separation is a very painful time for most people. The level of resentment, built up over time can be very destructive. It can manifest itself in many ways, including:

- a) Draining you and your family emotionally;
- b) Increasing your legal fees. The more hostility, the more people argue and therefore, the more time it will take – read – more expensive;
- c) Prolonging the period of time needed to come to resolve your file. The best advice is for you to TRY to be as objective as possible given the difficult circumstances you find yourself in today.

If you find yourself reading this then your separation is likely more involved than one where two people shake hands as they bid each other a simple “goodbye”. You are probably experiencing a high level of “conflict” – adverse interests and adverse positions. Indeed, in most cases “separation” is not accomplished through a clean and easy break. This is because separation is more than just an end. Separation is also a beginning. It is the beginning of a process through which you will have the opportunity to discover what makes you happy. It can also be a legal process. So as you embark on your journey of separation, do so with at least the same level of sophistication you would use in buying a new car. Do some research, ask around, test drive a lawyer or two and then make informed decisions.

### **Picking a Lawyer**

There are two distinct aspects to any family law file: (a) the legal issues, and (b) the appropriate dispute resolution process.

To use a medical metaphor: A good lawyer must be skilled in both diagnosing your problem (the legal issues) and determining what would be the best course of treatment (the dispute resolution process).

The start of any file involves a triage of your “symptoms”. Your separation may “present” with a complete array of issues (*e.g.*, parenting, property, child support and spousal support, *etc.*), or you may require attention for only some discrete problem(s).

The second aspect involves identifying what “treatment” or dispute resolution process(es) (“DR” for short) promises the best hope for a cost-effective and timely resolution. Mediation may work! It may not! Collaborative Family Law may work and then again it may not! This is an assessment you and your

lawyer will undertake together. You must be able to trust your lawyer's advice as to the best DR process for your particular circumstances.

In order to successfully "diagnose" your separation and recommend "treatment", your lawyer will have to take a thorough history and "run some tests". This will likely require time and money. Your lawyer's ability to advise you on these matters will depend a great deal on how well you communicate with him or her. For this reason, do not just check the phonebook or the web for the lawyer closest to you! Finding the right family law lawyer for you takes some work and careful consideration.

A good family lawyer will be someone who is sensitive but not too sympathetic – lawyers are not therapists. It is a mistake to look for someone who may get too caught up in fighting, as fighting should always be a last resort. You should look for someone who has the perspicacity to help you deal with your issues and the ability to respond to the issues your spouse will throw on the table as well.

Whether you are "satisfied" will also depend on whether your expectations are realistic with regards to the outcome of your separation. It will also depend on whether you have a good understanding of the respective roles in the separation process. You need to be clear on your lawyer's responsibilities to you, your responsibilities to your lawyer and how this affects the process.

So far as lawyers are concerned, none leave law school equipped with a magic wand or a crystal ball. Just as no doctor can cure every illness or predict every outcome, no lawyer can "make it all better" or tell you with certainty how long your separation will take to sort out, or how it will end, *etc.* You must be able to trust your lawyer's advice, but also realize that sometimes your lawyer will not be able to provide definitive answers.

Both you and your lawyer will have to possess the virtue of patience. The reality is that separation does not happen instantly – it is a process. Therefore, despite you and your lawyer's efforts, your relationship with your spouse may not come to an end as quickly as you would like. This is an increasingly difficult concept for people to grasp as we seemingly live in an age of instantaneous "everything". It is helpful to remember that your relationship was not instantaneous. You took time to get to know your spouse through dating, perhaps living together and then marriage (or continued cohabitation). It follows then that it will take some time to end your relationship.

You may just be figuring out that legal problems can be complex and difficult. As such, the practice of law is **NOT** an assembly line. We have become too accustomed to "instant" results in today's highly technological world,

however your legal issues do not lend themselves to this approach. Legal issues, particularly family law issues, require a high degree of thought and deliberation. The types of problems family lawyers deal with are doubly complex because, aside from the legal component, we also deal with the inevitable “human element”. We deal with people going through emotional turmoil, who are often not at their best. We do our best to manage the human factor as we tackle the legal complexities. For this reason, the lawyer you choose should not only have a skilled legal mind, but also be adept at managing the “human component”.

Your lawyer’s responsibilities to you include giving you good service and sound advice. As far as good service is concerned, you should not expect this to come in the form of an “instant answer” in each and every case. In order to give you sound advice, your lawyer may need to take the time to carefully analyze your situation and the law. Your lawyer’s ability to give you sound advice is also dependant on *you*. It is important that you understand your role in working with your lawyer (e.g., providing information, giving cogent and clear instructions, *etc.*). Your lawyer is not your “mouth piece”. The more you help your lawyer the better prepared he or she will be to meet the challenges presented by your particular case.

You cannot tell your doctor how to treat you and so it is with your lawyer.

### **Picking a Dispute Resolution (DR) Process**

The DR spectrum covers everything from sitting at the kitchen table discussing how best to resolve your conflict over a nice cup of coffee through to litigating at the Supreme Court. This means that there is a wide variety of dispute resolution options to choose from.

It is crucial to pick the right process. Picking the right process may sound simple, but it is not. Your lawyer will draw on years of experience joined with training and skill in order to determine whether you and your spouse are suitable candidates for a particular DR process, and the likelihood that a particular process will succeed in your circumstances. Whether any given DR process will work for you will depend on a myriad of factors including the personalities, finances, level of emotional turmoil, and where you are at in the stages of conflict.

Not all DR processes will be open to you. If you earnestly wish to mediate, but your spouse has dug his or her heels in and will not cooperate, then mediation will not likely be a viable option. If you wish to litigate, but cannot afford it and have a temperament that sees you crumble under the least bit of stress, then you are better off trying something else. Sometimes, your file may require the use of more than one DR process. For example, you may settle all but

one issue, say spousal support, through negotiations (or mediation or Collaborative Family Law, *etc.*). The result being that you must utilize another process, such as Court or arbitration, to decide the outstanding issue of spousal support.

Now that you are separating you may see your spouse in a different light. He or she may not seem like the person you once knew. For that matter, you are probably a little different now, too. In order to pick the right process, you must be objective and honest in recognizing who you and your soon-to-be-former spouse are *today*. A good family law lawyer will help you determine, objectively, whether you and your spouse are suitable for mediation, CFL or some other DR option or options.

## Dispute Resolution Processes

### Principled Negotiations

There is nothing magic about 'principled negotiations'. This process is about negotiating based on rational and objective criteria. One separates (no pun intended) the people from the problems and focuses on the problems. This process is quite clearly distinguished from haggling or simply being contrary or difficult. Make no mistake, principled negotiations is hard work. Being difficult is far easier.

There is a great deal of literature about principled negotiations most of which arose from the Harvard Negotiation Project. The fundamental aspect to this form of negotiation is the agreement that all sides will employ rational and objective criteria when negotiating – as distinguished from yelling, calling people names or taking an unreasonable position and not budging from that unreasonable position.

**This process requires both people to be open and honest with each other and with themselves and also open with each other about what it is they want and why!** This doesn't mean you just "spill your guts" in the hope your spouse will do the same. The ground rules require that each is open, honest and forthright. If it appears that your spouse is not prepared to be open, honest and forthright then some other DR process may be required.

To better understand a "principled" approach let us take an example. Suppose the subject of the conflict is an orange. That is all there is to 'fight' over. Your spouse wants it and you want it. The typical 'positional' approach is to try to slice the orange, each of you vying for the bigger part. Some people feel that cutting the orange in half is the 'fair' and 'just' solution. In part, what principled negotiations leads us to do is find out why each of you want the orange or, more

specifically, what are your ‘interests’ with regards to the orange? In principled negotiations, you and your lawyer take the time to consider what the underlying interests are through the use of rational and objective criteria. It may well be that your spouse simply wants the orange peel because he wishes to make orange pudding. You, on the other hand, want the orange juice to make a drink. Only by discovering the underlying interests, can we determine that there is a much better way to share the orange than slicing it. Through the use of “principled negotiation” both of you get what you want and the available resources, *i.e.*, the orange, are maximized.

## Mediation

One powerful dispute resolution tool is **mediation**. This is an excellent choice where both parties are willing to sit down and discuss their respective difficulties in an open, honest and forthright manner with a qualified family law mediator. The goal is to achieve an equitable and fair settlement of the issues. The parties’ lawyers are not usually present at the mediation. Therefore, for most of this process you and your spouse are sharing the cost of only one professional.

There are several excellent mediators in the Ottawa area. You would still be required to retain your own lawyer to provide independent legal advice (ILA). ILA helps ensure that both you and your spouse know exactly what you are agreeing to at the end of the day as it is not the mediator’s role to protect your interests.

You may wish to visit the Ontario Association of Family Mediation website at [www.oafm.on.ca](http://www.oafm.on.ca) or the Ottawa chapter at [www.familymediationottawa.com](http://www.familymediationottawa.com).

## Collaborative Family Law (“CFL”)

**Collaborative Family Law** is another DR option. This is a relatively new approach to dealing with the challenges faced by separating couples. It requires a sincere commitment on the part of both spouses to work together with their respective and qualified **collaborative family law** lawyers to reach a mutually acceptable agreement. **Everyone works together towards a common and mutually acceptable resolution.**

The usual successful CFL file results in a separation agreement that each of the parties can live with as they move on with their lives. One of the benefits of this approach is that all four parties are committed to bringing about the best possible solution for all concerned. This option does not allow for either party to initiate litigation while engaged in the **collaborative family law** process. However, should the **collaborative family law** process break down, the parties

are then required to retain new counsel as both **collaborative family law** lawyers must agree not to represent their respective clients in Court should the matter be litigated. For more information about this dispute resolution process as well as to see which lawyers in the Ottawa area are qualified please visit the website at [www.collaborative-law.ca](http://www.collaborative-law.ca).

More on this option below.

### Four-way Settlement Conference or Five-way Settlement Conference

A more traditional – or “in the box” option - is for the parties, with the assistance of counsel, to have a **four-way settlement conference** (comprising of the parties and their respective counsel). These meetings are almost always held on a “without prejudice” basis. Without prejudice means that everything said or shared during the course of these meetings remains privileged and confidential and what is shared cannot be disclosed to other parties including the Court (if you end up litigating). This approach is different than **collaborative family law** in that each lawyer approaches the **four-way settlement conference** solely from the perspective of their own client. This is based on the adversarial model meaning each party will attempt to obtain the best agreement they can for themselves. This means you would sit down and try to fashion an agreement once all of the financial particulars are known. The lawyers would assist their respective clients from their own perspectives to fashion an agreement. This can be as effective as mediation providing there is a sufficient level of trust and co-operation. This option is based on an adversarial model and, therefore, different than either **mediation** or **collaborative family law**.

The five-way settlement conference is a four-way settlement conference with the addition of a fifth person. The fifth person would be a senior practitioner who would listen to the respective positions and then offer his or her opinion about the case. This is usually non-binding.

### Litigation (Court or Arbitration)

This option is a last resort. It is purely adversarial. To use a medical metaphor, this is the surgical option when all other options, physiotherapy, drugs, chiropractor, *etc.*, have failed. In litigation one side is pitted against the other in a battle fought through counsel. This option sees an independent third party, *e.g.*, a Judge or Arbitrator, make the decisions about what happens in YOUR case. This option is divisive, time-consuming, emotionally draining, public (if it proceeds through the courts) and very costly. Financial resources are hard won and litigation usually sees these scarce resources squandered needlessly. While it may be “Ms. X’s” sincere wish that this fourth option is not



the only course left open to her, it will be her only recourse when all other forms of dispute resolution fail.

**THE COLLABORATIVE WAY TO DIVORCE**  
**By Stuart G. Webb and Ronald Ousky**

**Excerpts (*italicized*) with some additional notes by Cecil J. Lyon (plain font)**

**CHAPTER 1: THE BASICS**

**Comparing the Collaborative Process to a Traditional Divorce**

*"As with any trip, it's essential to know where you want to end up before you plot out your itinerary.*

*Where do you want to be emotionally, physically and psychologically after it's over."*

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**Remember:**

- a) You are not the first to go through this agony;
- b) You are not alone;
- c) You are not going to die from getting divorced;
- d) You will survive and some good choices will allow you to be better off knowing what it is you want out of life and certainly what it is you'll expect from a new relationship.

**You have CHOICES – remember that – you have CHOICES!**

**Some Good Choices:**

You can choose to be thoughtful  
You can choose to act with integrity  
You can choose to be on your "best behaviour"  
You can choose to be respectful  
You can choose to be empathetic  
You can choose to resist destructive feelings  
You can choose to focus your energy on crafting a positive resolution



### **Some Bad Choices:**

You can choose to be vengeful  
You can choose to forfeit your hard earned money on legal fees  
You can choose to get caught up in the angst of separation at a detriment to your emotional and physical health

### **Imaginings**

As difficult as it may be when you are in the throws of a separation, you must take a breath – at least one, step back and think carefully about where you want to be in six months – then take three or four more breaths, a few more steps back and think about where you want to be in a year – then pause, take some more breaths and a few more steps back and go for broke – ask yourself where you want to be in five years.

Dare to imagine – if you can – whether you and your “ex” will be able to attend your children’s weddings not necessarily as friends but at least as proud parents.

You need to think in macro terms rather than micro terms – look beyond the end of your nose. If you need help reframing this situation into an opportunity to start afresh then please ask for and seek out appropriate help. You are not the first to go through this nor will you be the last.

You may not have had the perfect marriage but at one time you did care for your spouse. Remember that! Remember that clinging to anger and other negative emotions hurts you more than it hurts your “ex”.

Resist the all too alluring temptation to go over to the dark side. If you find yourself drawn to the dark side then reach out for help. You are not alone and you are certainly not the first to go through a divorce.

To employ an appropriate platitude, this “ending” is also a “beginning”. Focus on the new beginning. Grasp the opportunity to start over with both hands.

Focus on developing and sustaining a positive attitude.

A quick visit to the dark side will only see you wallow in “failure” and “despair”. Consider this, even when looked at from that dark side, this is an end to what was not right for you. Seize this as a learning opportunity!

This does not to suggest that you do not take the necessary time to grieve, to mourn and yes, perhaps at the end of the day to be thankful. It is okay to be afraid but don't let your fear consume you.

### **Remember**

At one time you cared deeply enough to marry your spouse and have children. You shared laughter and love and surely some good times. You still have many fond memories of what you shared. Separation does not mean that all of the love and laughter – all of the memories – are banished forever!

Very often many of the qualities you once found attractive in your spouse are now those qualities that seem the very reason for leaving. Perhaps you were attracted to his/her commitment to a career. Should it then be such a surprise that he/she is still so committed to his/her career?

Perhaps you fall into the category of people who entered into a relationship hoping their new spouse would change. Should you be angry with your spouse when no change is forthcoming? How quickly people forget what drew them together to focus only on the negative and what drives them apart.

Remember that both of you had a part to play in all of this. To now lay the blame solely at the foot of the other spouse, absolving yourself from all blame, is both counterproductive and dishonest. Accept the fact that you, too, played a role. Taking responsibility will help you move forward.

### **The Traditional Method: Fighting Fire with Fire**

*"Less than 5 percent of all divorce cases actually go to Trial. The rest settle before they ever get to court. So while you're out looking for courtroom pizzazz, you've likely overlooked a much more important qualification: negotiating skills."*

### **Page 6**

If you think you want a gladiator – a warrior – then STOP and ask yourself "why?"

Be honest about what is best for you, your children, your future? Nothing is to be gained by driving a bigger wedge between you and your former spouse. Driving a wedge between you and the person you shared so much with will cost you in dollars, in time, in emotions and will impede your ability to start over.

**Remember, you have the power to choose – so choose wisely.**

### **An Alternative: The Collaborative Method of Gathering and Exchanging Information**

*"In the Collaborative process, the Participation Agreement makes clear that you and your spouse must voluntarily disclose all relevant facts. Therefore, most Collaborative cases result in your having more information at a much lower costs, financially and emotionally.*

*As a practical matter, the two of you can choose to gather the information on your own or have the attorneys assist you in finding what they need."*

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### **Disadvantages of the Traditional Method**

*"You and your spouse have the best information about what your family needs. You – not your attorney – have the most at stake in the outcome of your case. Shutting you out of the negotiation process or forcing you to communicate indirectly generally reduces your chances of finding the best solutions."*

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It is your divorce so own it. Take responsibility by rolling up your sleeves to work at finding the best solutions for you, your children and yes, even your "ex". Recognize that what is best for your "ex" may prove beneficial to you too.

This is an important point: take responsibility for your divorce – just as you would for your health care. It is not a lawyer's task to "solve" the problems of your divorce – lawyers can't "make it all better". Be prepared to take an active role in resolving your separation issues. Closing your eyes and hoping doesn't make it so.

### **An Alternative: The Collaborative Method of Negotiating Solutions**

*"Collaborative attorneys are trained to avoid arguments and accusations in favour of more effective strategies, such as goal setting, active listening, identifying common interests, generating creative solutions, and maximizing outcomes."*

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*"Settlements that occur on the courthouse steps aren't much better. Last-minute decisions are made in the heat of the moment, after you've already paid out a lot of money and suffered through a great deal of acrimony leading up to trial."*

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### **An Alternative: The Collaborative Process of Finalizing the Divorce**

*"By engaging you and your spouse in the decision making, the Collaborative process often helps you both develop the skills to resolve future issues on your own, with minimal legal help. When the divorce is final, you and your spouse may still need to solve hundreds of problems on your own, going forward, particularly if you have children."*

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## **CHAPTER 2: DIVORCE ALTERNATIVES**

### **Litigated Settlements**

*"Litigated settlements generally are made after much of the preparation for trial has been completed and most of the financial and psychological damage has already been done. They're also frequently made under pressure, forced by the party who seems to have the stronger case."*

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Try to control as much as of the outcome as you can. Why would anyone let someone else decide what is best for him or her or their children? That's what happens when you litigate and let a judge decide. Mediation, CFL and principled negotiations (lawyer to lawyer) all allow you to maintain control. Arbitration and litigation sees that control evaporate.

### **Future Success with the Collaborative Process**

*"Questions to ask*

- *What matters most to you in life?*
- *What are the dreams you have for yourself and your family?*
- *What will stand out as most important when you look back at this part of your life twenty years from now?"*

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## **Taking Personal Responsibility**

*"One of the most important indicators of success in the Collaborative process is your ability to take personal responsibility for your role in resolving the issues at hand.*

*So you must decide if you are willing to accept the responsibility and to do the hard work necessary to achieve success through this process."*

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## **Playing the Blame Game**

*"One of the advantages of the traditional process is that if things go wrong (and they often do), there's always someone around to blame: your spouse, his or her attorney, the judge, your attorney, the system, choose one!"*

*Blaming is easy – that's one main reason why people engage in "blaming behaviour".*

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Blaming gets you nowhere. It accomplishes nothing positive unless you think creating additional work for lawyers, the Courts and therapists is positive.

## **Role of the Attorneys**

*"In the traditional adversarial method, it's common to harbour the fantasy that your attorney will make the perfect argument, leading to your ultimate vindication.*

*Whether you're considering the Collaborative process or a traditional model, it's important to grasp early on that attorneys do not solve the problems – imagining they do so will cause only disappointment. At best, Collaborative attorneys are responsible for guiding you through the process in a way that maximizes your chance to achieve the best possible results. While an effective attorney can be very valuable in helping you help yourself, the ultimate responsibility for the outcome of your case remains with you and your spouse."*

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No lawyer has yet ever left law school with either a crystal ball or a magic wand. People have finally come to realize that doctors do not make you better. Sure, a surgeon can remove that cancerous tumour in your lung but if you do not stop smoking and watch your health then all will be for naught. The same goes

for family law lawyers. A good family law lawyer can help you survive your separation but no family law lawyer can make everything better.

### **Seeing the Big Picture**

*"Will it have been the custody "label" that you used, or how the children fared? Will it be the exact dollar amounts of your property division, or the fact that you emerged from the divorce with your self-respect intact?"*

*Even clients who "won" in court often wound up upset with the damage that litigation did to their lives over the long haul. On the flip side, those who made seemingly painful compromises in the short term in favour of meeting their big-picture goals seemed, unanimously, to have reaped the rewards."*

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### **Emotions**

*"And yet one of the unfortunate realities of divorce is that people are often asked to make some of the most important decisions of their lives at a time when they are the least equipped to do so."*

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Remember Kipling, "... keep your head when all about you are losing theirs ..."

### **Seeing and Understanding Your Spouse's Point of View**

*"I am willing to try to see things from my spouse's point of view in order to help achieve the best possible outcome."*

*If you're unable or unwilling to put yourself in your spouse's shoes, you'll likely have trouble benefiting from the Collaborative process.*

*The short answer is that it's in your own best interest. While showing empathy may indeed seem like the nice thing to do, as Collaborative attorneys we're less concerned about being nice than being smart. The more carefully you listen to what your spouse is saying is important to him or her, the more ready you will find the keys to the solution that you will both find acceptable."*

**Page 47 & 48**

## **Building Trust**

*"However, in order to make the Collaborative process work, you must be willing to attempt to trust, even in small measurable things, and you must be willing to engage in trustworthy behaviour in order to restore some integrity to the relationship."*

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## **Committing to the Process**

*"I am willing to commit myself fully to resolving the issues through the Collaborative process by working toward common interests rather than simply arguing in favour of my positions."*

*"Do not be so naïve to believe that simply by spouting the right words to have convinced everyone of your commitment to the process. Actions are the measure of commitment."*

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## **Time**

*"You are more likely to have a successful Collaborative divorce if you're willing to be patient and plan carefully."*

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It is useful to remind those going through a separation that the separation came about after years, even decades, of being together. To expect that it will all be over in a few days is both unhelpful and unrealistic.

Computers, cell phones and the internet may allow for instantaneous communications but all of these tools do not make for better communications. Indeed, a cogent argument can be made that these tools result in poorer communications.

Communication is based on understanding. Understanding has to start with thoughtfulness and reflection on what you want to tell your spouse. Knee-jerk reactions – because you are hurt or angry – accomplish nothing save for a fleeting sense of satisfaction. This feeds into our instant gratification society. Sure, you will feel a moment of "boy, that felt good", but that lasts only a moment. The damage will have been done and that damage may not be remedial.



Speed is not always your friend so take your time and communicate.  
Reach for understanding.

### **Resources**

*"Collaborative law is more about the quality of the settlement than about speed and cost."*

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## **CHAPTER 3: GETTING YOUR SPOUSE TO AGREE**

### **Experience and Training**

*"In choosing a Collaborative attorney, your main focus should be on settlement skills, in particular, the type of interest-based negotiation skills taught in Collaborative and mediation trainings."*

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## **CHAPTER 5: FOUR-WAY MEETINGS**

### **The Collaborative Four-Way Is Different From Other Four-Way Meetings**

*"They likely will be your greatest challenge, and they require much preparation. But they present unlimited opportunities to find solutions that will help you achieve your most important goals."*

*Your long-term goals and interests are the foundation. The more secure you are in the goals you have established, the more likely you are to achieve the successful and durable outcomes that you want.*

*Much of the time spent in these early meetings will be for the purpose of setting the foundation and framing the issues. During these early stages, you may find yourself tempted to want to jump ahead to final decisions before you are ready to do so."*

**Page 100 & 101**

## Practical Aspects of the Typical Collaborative Four-Way Meetings

*"Let's turn to the practical task of explaining what actually happens in these meetings:*

- **Who** attends the meetings? Usually these meetings will include you, your spouse, and both attorneys.
- **Where** do these meetings take place? Generally at the office (or conference rooms) of one of the attorneys.
- **When** do these meetings take place? They're generally scheduled about two to four weeks apart, at a time when all the participants can be there.
- **What** happens during these meetings:
  - **Introductions** are made and a **tone** is set for the meetings
  - **Ground rules** are established for how to conduct the meetings
  - The Collaborative process is **explained** and discussed
  - **Reasons for choosing** the Collaborative method are discussed
  - If it is first meeting, the **Participation Agreement** is reviewed and signed
  - **Goals and interests** are identified
  - **Information** is fully disclosed
  - **Issues and interests** are identified
  - **Questions** are answered
  - **Homework** is determined
  - Issues are **prioritized**
  - **Alternatives** are identified and evaluated
  - **Agreements** are reached
  - **Agendas** are set for future meetings
  - **Documents** are signed
  - Decisions are made about whether to include other **team members**
  - Decisions are made about what whether to retain **experts**
  - **Final steps** for completing the process are outlined"

Page 100-101

## Identifying Goals and Interests

*"Your success in the Collaborative process will depend a great deal on your ability to pause in the middle of the chaos to truly think about your long-term goals."*

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## **The Conflict-Resolution Process**

*"The framework of Collaborative four-ways is generally developed around the following four steps:*

1. *Identifying issues*
2. *Gathering facts*
3. *Developing options*
4. *Negotiating solutions*

*It is sheer folly to skip any one or more of these steps. Each must be taken and each of these steps requires time and effort."*

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Do not underestimate the power of the process. It is too easy to fall into the blaming game, pointing fingers, *etc.* What takes effort and courage is to work the process, identify issues, gather the necessary facts, work together to develop options – workable options - and then negotiate in a good faith way, the solutions that work for both of you.

## **CHAPTER 7: GOALS AND COMMITMENT**

### **The First Steps to Success in the Collaborative Process**

*"Success via the Collaborative process comes down to determining what you really want (establishing your goals), determining what you are willing to do to achieve these goals (deciding what to commit to), and then deciding how to go about achieving your goals (crafting a strategy)."*

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### **Thinking About What You Truly Want**

*"Start by thinking about what truly matters to you, more than anything else, regardless of whether you think it relates to the divorce. You can then think about which of these broader goals or interests you want to achieve through the divorce process."*

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## **The Emotional Commitment**

*"The Collaborative process, with its emphasis on four-way meetings and direct communication, requires a significant emotional commitment from both you and your spouse.*

*Ultimately, you may need to tolerate a certain level of discomfort in order to achieve the best outcome.*

*In some instances, you can choose to suspend the direct four-way meetings and conduct the meetings through smaller "sub-caucuses," in which you meet with your attorney (or both attorneys) in one room, and the attorneys meet with your spouse in a separate room."*

**Page 133**

## **The Advantages of a High Estimate**

*"As a rule of thumb, setting aside 5 percent of the value of your house most likely will cover your Collaborative divorce costs."*

**Page 141**

## **CHAPTER 8: PREPAREING FOR THE FOUR-WAY MEETINGS**

### **Information Gathering**

*"The very first step after retaining your lawyers is to gather all the financial information that is relevant to your case."*

**Page 149**

You would also be well advised to take the list of priorities you developed going into the process so you keep those priorities front and centre.

### **Meeting Your Attorney**

- *"Discuss why you and your spouse have chosen Collaborative law and your key hopes for the process.*
- *Review, discuss, and sign the Participation Agreement, which, as you may remember, states that the lawyers will withdraw from the case if it turns adversarial.*

- *Review, discuss, and sign ground rules.*
- *Review and sign Joint Petition “*

*“In general, the meeting should last no more than two hours. Our experience has shown that participants lose their mental edge if the sessions go much longer. (The words testify and foggy come to mind!)”*

## **Page 152**

Begin by recognizing the limitations of patience and endurance. It is quite understandable that you want this over as soon as possible. However, we, as human beings, have limitations and these limitations must be respected. Failure to respect these limitations may jeopardize your chances for success.

### **What May Happen at the First Meeting**

*“One of the goals of this first four-way meeting is to eliminate some of the preconceived notions you may have about your spouse’s attorney so you can form a good working relationship.*

*You’ll need to understand that your lawyer will be bending over backward to establish rapport and to even demonstrate empathy with your spouse. This may seem odd at first, but keep in mind that it’s really in your interest.*

*While you may feel that reviewing the Participation Agreement is a waste of precious time and money, think of it as a ceremonial laying of the ground rules.*

*You and your spouse may talk about why you have chosen the Collaborative process.*

*In general it is helpful for you and your spouse to be able to say, in your own words, why you are doing it this way.*

*You and your spouse will talk about your goals and interests. The initial four-way meeting might be the first opportunity you and your spouse will have to talk with each other about your goals and interests.*

*In addition, as part of the settlement process, you both will sign a statement, under oath, stating that you have fully and accurately disclosed all relevant facts.”*

## **Page 160-162**

## **CHAPTER 10: THE MIDDLE FOUR-WAY MEETINGS**

### **Perceptions and Projections**

*"It's very important that you discuss with your lawyer your subjective views of the first meeting: how you perceived your spouse's attorney; what made you feel relaxed and what made you feel ill at ease, and so on.*

*Tell your lawyer about any concerns you might have and anything else you think he should know.*

*Frank and open communications with your lawyer, your DR professional, is critical. Sharing, de-briefing and building on what you have learned or what concerns you have is a must if the process is to be successful.*

*You have to want the process to succeed. Recognize what is riding on the success – not the least is your ability to move forward with your life – to capture some happiness."*

**Page 167 & 168**

## **CHAPTER 13: PUTTING THE DIVORCE BEHIND YOU AND NURTURING YOUR FAMILY'S POSTDIVORCE LIFE**

### **The Difference that Collaborative Law Has Made**

*"the last of the human freedoms [is] to choose one's attitude in any given set of circumstances, to choose one's own way" Viktor Frankl, psychologist*

**Page 186**

The idea of 'choice' has already been touched upon at the beginning. Keep in mind the power of choice. Do not succumb to your demons or fears.

### **When Are You Done?**

*"What makes the practice of Collaborative law fulfilling for us is the ability to help people focus on creating a fresh start, a new life, a happier situation."*

**Page 188**

## **APPENDIX E: EXAMPLES OF COMMON GOALS AND INTERESTS IN DIVORCE CASES**

### **Goals and Interests Relating to Children**

- *"I want our children to be well-adjusted*
- *I want our children to be happy*
- *I want our children to feel good about themselves"*

**Page 211**

## **APPENDIX I: THE IMPORTANCE OF STATE OF MIND IN DISPUTE RESOLUTION: A SPIRITUAL APPROACH**

### **The Serenity Space**

*"Quite Simply, this space is just your frame of reference or state of being when you are relaxed and feeling good about yourself, and not trying to "figure things out".*

*"We all have the natural ability to tap into the collective common-sense wisdom of the universe and act, respond, and communicate in a loving, responsible, synchronous manner with what is going on in our world. It may come as a surprise to you, but our state of mind in the Serenity Space is our natural space – our birthright – the state in which we truly experience who we are."*

**Page 229 & 230**

### **Navigating the Spaces**

1. *"How can we recognize when we are shifting from the Serenity Space to the Insecurity Space?"*
2. *If we find ourselves in the Insecurity Space, how can we get back to the Serenity Space?"*

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## **UNDERSTANDING CONFLICT**

*Conflict as defined in Webster's Dictionary is a "...struggle resulting from incompatible or opposing needs, drives, wishes or external or internal demands."*

*The goal of interest based dispute resolution is not to eliminate conflict but rather capitalize on its transformative potential and use it as a springboard to collaborative, creative and dynamic resolutions.*

*Many different forces work together to create the dynamic of conflict. How we manage it affects the way we manage ourselves and others during a dispute. In this regard, it is helpful to be aware of the different sources of conflict and factors that operate to exacerbate or heighten tensions in conflict such as power imbalances, emotions, expectations, stress, etc.*

## **SOURCES OF CONFLICT**

*Understanding the root of conflict is an important first step toward a successful resolution. For example, if misinterpretation of data is assumed to be the problem while the real conflict is a relationship issue, you will not arrive at the proper solution and the underlying conflict will persist.*

## **A PRIMER ON CONFLICT**

### **What About Conflict?**

- Insight into the causes of conflict helps to understand your client's interests which will better equip you in choosing an appropriate dispute resolution strategy.

### **What is Conflict?**

- There are many definitions of conflict. In the most basic, simple terms:
  - *A belief (not necessarily a fact) that if you get what you want, I cannot get what I want.*

### **The Circle of Conflict**

- Analytical tool which has been used to categorize the major sources of conflict and can be thought of as follows:

#### **Relationship Problems**

- Are caused by poor communication, misperceptions, stereotypes, strong emotions and a pattern of negative behaviours. They are caused by power imbalances and power struggles between the parties.

#### **Data Problems**

- Occur when information is lacking, there is misinformation, parties disagree on what data is relevant or on how to interpret existing data, or parties use different data collecting and assessing processes.

#### **Structural Problems**

- Are rooted in patterns or structures that affect relationship and interests
- 'How a situation is set up' resources, time geographical factors, decision making

#### **Value Problems**

- Are caused when people with different belief systems insist on one set of values to the

exclusion of divergent views

### **Interest Problems**

- Are based on actual or perceived incompatibility in Substantive, Procedural and/or Psychological needs
- Resolving interest conflicts requires understanding and meeting some of *each party's needs* in each of these categories – *the Satisfaction Triangle*
  - *Substantive* – financial, property, resources, time
  - *Procedural* – how things are done, how disputes are resolved
  - *Psychological* – emotional needs, perceptions of trust, fairness, desire for respect, acknowledgement

### **'The Wheel of Conflict'**

- **The Wheel of Conflict is a derivative of the 'Circle of Conflict' developed by Bernard Mayer of CDR Associates**

At the Center of the Wheel

- Human **needs** are at the center of all conflicts – people engage in conflict because they have (or believe they have) needs that are met by the conflict process itself or because they have (or believe they have) needs that are inconsistent with those of others
- People engage in conflict because of their *needs* and conflict cannot be transformed or settled unless *needs are addressed* in some way
- **Five Basic Forces or Sources of Conflict:**

### **Communication**

- Human beings are imperfect communicators

- It is difficult for individuals to communicate particularly under emotionally difficult circumstances
- Contributing factors include: culture, gender, age, class environment, upbringing, perceived power, inaccurate or incomplete stereotypes, and “baggage”.
- Attempting to try to solve problems before they are really understood

### **Emotions**

- Emotions fuel conflict...and they are the key to defusing it

### **Values**

- Beliefs about what is important, what is right and what is wrong
- Core beliefs

### **Structure**

- External framework in which an interaction takes place

### **History**

- Context: ‘Context: ‘Conflict cannot be understood independently of its historical context’

## WHEN THE CLIENTS SAY...

Something negative about the other person:

*Acknowledge their feelings; tell them you hear how (frustrated, angry, hurt, etc.) they are but if their goal is to negotiate a successful agreement with the other party, it would be more effective to speak without characterizing, accusing, blaming, or describing the other person.*

Something which describes them as having no choices or having no power relative to the other party:

*Tell them that the purpose of working collaboratively rather than competitively or adversarially is to make sure that each party has the opportunity to define the process and the outcome.*

Something which focuses on how miserable their lives are at that point and how grim the future looks:

*Tell them that while the resources of the marriage and the parties are limited, and while the separation into two households has created a negative cash flow in the short run, the goal of the lawyers is to explore every possible fact, every possible alternative and every possible bargain that the parties might employ to maximize what is available for the good of the family.*

Something which compares how much better the other spouse has it:

*Tell them what is helpful in the process is for them to express their individual needs and concerns which are valid and need to be addressed on their own, Comparing them to the other party doesn't make them more valid, but it will most likely cause a negative response in the other party who hears him/herself being described.*

Vent their anger, hurt, disgust, etc.:

*Acknowledge their feeling (anger, grief, etc.); suggest that they will be more successful at achieving their desired result in a direct negotiation with the other party if they manage their emotions and express those feelings more appropriately.*

Open up what are obviously old arguments or begin revisiting a past event and pointing fingers of blame:

*Tell them that there is not much you as a lawyer can contribute to differences they will never agree upon. Would it not be more effective for them to focus on the present issues and the future solutions that they would like to develop than to go back over what is obviously a very painful past again and again.*

Start arguing over the value of the family residence, or the children's needs:

*Remind them that they each have an individual set of perspectives, interests and beliefs, and that neither is likely to change any of those for the other, Would it not be more*

*effective to explore those differences for bargaining opportunities rather than spin their respective wheels in a verbal cul-de-sac.*

Something like, "I'm not willing to agree to anything but 50/50 custody" or "I'm not willing to let him see the children until he quits seeing his girlfriend."

*Remind them that if their goal is to be as effective as possible in achieving their most desired outcome, would it not be more effective to state their interests and goals rather than claiming positions and defining negatives.*