

Collaborative family law-a more sensible way to resolve separation and divorce.

It is well known that the Ontario Civil Court system is broken, especially with respect to resolution of separation and divorce issues (the system).

The system is unacceptably complicated, lengthy and extremely expensive, to the point where it is out of reach of most of its participants. This is especially true in separation and divorce cases.

The system focuses on an adversarial approach where counsel for each of the parties attempts to achieve the best possible result for each party. Unfortunately that is often taken to extremes and compromise is ignored and hardball tactics become the standard procedure.

This results in numerous court attendances with volumes of briefs and documents and with each party attempting to convince the judge that he/ she is right and the other is wrong. This process can literally take years and cost tens of thousands of dollars.

Collaborative law focuses on the opposite concept. Collaborative law is a process in which the parties seek to work with their counsel to respect each other and their positions but also to focus on compromise in order to reach a mutually agreeable separation agreement dealing with all of the same terms that would be considered in a court application, without the adversarial aspects of the court process.

In the original collaborative participation agreement the parties agree that they will try to negotiate an agreement without using the court process. If the parties cannot settle during the collaborative process they cannot continue on with their collaborative lawyers and they have to retain new lawyers to take them through the court process.

There is a list of local collaborative lawyers who are agreeable to participate in this process. (greybrucecollablaw.com) These lawyers have been specifically trained for this process and come to the table wanting to work with other counsel and respect the other clients in a fashion that will eventually lead to a settlement of all issues by way of a written agreement without court intervention.

If necessary the parties can have their own accounting representation and or family coaching representation to help in areas where the lawyers cannot.

The concept is that of a "team approach" with professionals and the parties all of attempting to come to a settlement that respects and satisfies the needs of both parties, and also children if they are involved.

The intent is a softer kinder, shorter and far less expensive process than the existing adversarial court process.

Even if the parties are presently struggling through the existing court process with their own lawyers, if both parties agree, they can call a "timeout" from the court process and retain collaborative lawyers to see if the matter can be settled through that process. If the collaborative process fails the parties can then return to their own lawyers and carry on with the litigation process.

In order to encourage the parties to be completely candid and open and to consider compromise where appropriate, if the collaborative process is not successful all of the materials and negotiations developed

in that process are considered confidential and may not be used by either party in the subsequent court process. Therefore a party does not have to worry that compromises or concessions made in the collaborative process can come back and later be a difficulty for them in the litigation process.

If an agreement is reached within the process and if the parties wish to include some of the terms in, for example, a divorce order, then a simple court application can be commenced and matters resolved by way of an agreed-upon court order based upon the terms of the collaborative settlement agreement.

For parties or families struggling with separation and or divorce issues, the collaborative process offers an attractive option to the present adversarial litigation process.

This article is not legal advice

Lawrence Ryder-collaborative lawyer