

ANOTHER WAY TO RESOLVE MATRIMONIAL DISPUTES

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When couples separate, they generally proceed as follows. Their lawyer requests information (financial etc.), provides legal advice, makes recommendations about custody, property, support etc and outlines process options. Usually the client follows the advice. A list of demands is sent to the other spouse; and in return, their demands comes back. This is “positional bargaining.” The ultimate threat being - agree to our demands, or we go to Court and have a Judge decide. We want to “win” and have the other side “lose”.

Having employed this model for 30 years, same is often lengthy, expensive, adversarial; and tends to have the unfortunate side effect of further damaging already fragile personal relationships between the parties. Once the matter is resolved, the parties frequently have ongoing contact, (ie) raising their children.

The shortfalls of this process, have been long recognized. Adverse effects may be ameliorated through mediation and arbitration. The new Family Law Rules (effective July 2004) institutionalized Case/Settlement Conferences, as mandatory prerequisites, before one could bring a contested motion, to defuse the process. Court action is still adversarial and based on positional bargaining.

A decade ago in the U.S., the genesis of **Collaborative Family Law** (“CFL”) immersed. The approach was to move away from positional bargaining, to “client centred bargaining”; and, to remove the threat of litigation. Thus, both lawyers sign an agreement, that if they are unable to reach a resolution, each party would hire new lawyers to litigate.

CFL is not for every client, nor every lawyer. ‘High conflict cases’ won’t work. CFL lawyers must undergo a paradigm shift, require training to help them move to a co-operative advisor, coach, team player, joint problem solver role. CFL lawyers still give substantive legal advice, but the lawyers and parties actually work together co-operatively, to devise resolutions, that meet the needs of the parties. The clients are actively involved throughout (determining process and resolutions), in an atmosphere specifically designed to preserve the party’s relationship and enhance creative co-parenting. This process may also be multi-disciplinary. Instead of hiring their own expert (ie. to value an asset), they jointly hire one expert. If a party needs the assistance of “divorce coach” (psychologist, social worker or mental health

professional), that involvement is supported.

Demonstrably a resolution, that the parties (with the assistance of professionals) have worked on, take ownership of, and customize to meet their particular needs, has a far better long term prognosis and usually a quantitatively better outcome, than one externally imposed.

There are functioning CFL Practice Groups in many major metropolitan areas. Currently, there is a steering committee attempting to establish such a practice group in Brant-Haldimand-Norfolk. Several Simcoe lawyers have taken upgrading in this area; others have expressed an interest in jointing such a practice group. The next stage is to arrange training, define practice group parameters and implement the service.

Hopefully, trained lawyers committed to CFL ideals will have formed a functioning CFL practice group in 2005.