

let's talk.



1 What are my choices for professional help in my separation/divorce?

All separations and divorces involve decisions and choices. Which professionals will assist you, and how you will utilise their help, are decisions that can affect whether your separation/divorce moves forward smoothly or not.

Some couples resolve all their separation/divorce issues with minimal professional assistance. At the other end of the spectrum, some couples engage in long drawn-out courtroom battles that cost dearly in emotional and financial resources. Most people find their needs fall between these extremes.

There are a number of ways in which you can resolve these issues. The list moves from choices involving the least degree of professional intervention, and the most privacy and client control, to choices involving greater professional intervention and the least privacy and control.

Conventional Representation: Each person engages their own solicitor. The solicitors take instructions from their clients through meetings, phone calls and correspondence. The solicitors then correspond with each other in an effort to negotiate a settlement on behalf of their clients. This process can take a long time because of the nature of the communication involved and as a result can be very frustrating. The clients can feel sidelined by the process. They may feel that they lack control of the process because they are relying on their solicitors to communicate their thoughts and feelings to the "other side". Although, solicitors can achieve amicable settlements for their clients through this process, this does not always happen. Even when it does, because the clients have not been fully involved, one or both may be unhappy with the outcome. There is great scope for misunderstanding in a situation where there is already mistrust. The solicitors effectively are engaging in an argument with each other to try to achieve the best settlement for their clients. As a result the process can be adversarial and often clients find that they become quite fixed on achieving particular settlement goals. This gets in the way of a reasonable and realistic settlement and can result in a perception of a winner/ loser outcome. If agreement cannot be reached by negotiation, it is likely that court action will follow. This is the costliest form of dispute resolution both emotionally and financially. Court actions can drag on for years and have a detrimental affect on the relationship of the parties and be stressful for the whole family.

Few clients report satisfaction with the outcome of cases handled this way, regardless of who won.

Mediation: A single neutral person, who may be a solicitor who is trained in mediation, acts as the mediator for the couple. The mediator helps the couple reach agreement, but does not give individual legal advice. Retaining your own solicitor for independent legal advice during mediation is generally wise. In most cases, the individual solicitors are only involved at the outset, giving preliminary advice, and at the end of mediation, to formalise the agreement that is reached as a result of mediation, and process the divorce through the court.

Collaborative Family Law: Each person retains his or her own trained collaborative solicitor to advise and assist in negotiating an agreement on all issues. All negotiations take place in "four-way" settlement meetings that both clients and solicitors attend. The solicitors cannot go to court or threaten to go to court. Settlement is the only agenda. If either client goes to court, both collaborative solicitors are disqualified from further participation. Each client has built-in legal advice and representation during negotiations, and each solicitor's job includes guiding the client toward reasonable resolutions. The legal advice is an integral part of the process, but all the decisions are made by the clients. Once settlement terms have been agreed the solicitors generally prepare and process all papers required for an uncontested divorce.

2 What is Collaborative Family Law?

Collaborative Family Law is the newest separation/divorce dispute-resolution model. In Collaborative Family Law, both parties retain separate, specially trained solicitors whose only job is to help them settle the case. If the solicitors do not succeed in helping the clients resolve the issues, the solicitors are out of a job and can never represent either client against the other again. All participants agree to work together respectfully, honestly, and in good faith to try to meet the legitimate needs of both parties, i.e. find win-win solutions. Four creative minds work together to devise individualized settlement scenarios. No-one may go to court, or even threaten to do so, and if that should occur, the Collaborative Family Law process terminates and both solicitors are disqualified from any further involvement in the case. Solicitors engaged for a Collaborative Family Law representation can never, under any circumstances, go to court for the clients who retained them, except to deal with an uncontested divorce or dissolution of a Civil Partnership.

3 Is Collaborative Family Law only for divorces?

Collaborative solicitors can do everything that a conventional family solicitor does except go to court. They can negotiate child-care agreements between unmarried couples, prenuptial and postnuptial agreements, and agreements terminating civil partnerships and informal single-sex relationships.

4 What is the difference between Collaborative Family Law and mediation?

In mediation, there is one neutral professional, very often a solicitor trained as a mediator, who helps the disputing parties try to settle their case. The mediator cannot give either party legal advice, and cannot help either side advocate his or her position. The mediator gives both parties legal information and generates options for them for dealing with the issues that need resolving. Mediation works very well for some couples, and is very often the best means of dispute resolution. It is more difficult to achieve a satisfactory outcome from mediation if one of the parties becomes unreasonable or is stubborn, or lacks negotiating skills. Your solicitor should discuss with you whether mediation is the best option for your situation.

5 How is Collaborative Family Law different from the traditional adversarial divorce process?

In Collaborative Family Law, all participate in an open, honest exchange of information. Neither party takes advantage of the miscalculations or mistakes of the others, but instead identifies and corrects them.

In Collaborative Family Law, both parties insulate their children from their disputes.

The parties in Collaborative Family Law jointly instruct consultants such as accountants or financial advisors, instead of adversarial experts.

In Collaborative Family Law, a respectful, creative effort to meet the legitimate needs of both spouses replaces tactical bargaining backed by threats of litigation.

In Collaborative Family Law, the solicitors must guide the process to settlement or withdraw from further participation, unlike adversarial solicitors, who remain involved whether the case settles or not.

6 What kind of information and documents are available in Collaborative Family Law negotiations?

Both sides sign a binding agreement to disclose all documents and information that relate to the issues, early and fully and voluntarily. Both solicitors stake their professional integrity on ensuring full, early, voluntary disclosure of necessary information.

7 What happens if one side or the other does not cooperate or is dishonest in some way, or misuses the Collaborative Family Law process to take advantage of the other party?

That can happen. There are no guarantees that one's rights will be protected if a participant in the Collaborative Family Law process acts in bad faith. There are no guarantees in conventional legal representation either. What is different about Collaborative Family Law is that the collaborative agreement requires a solicitor to withdraw upon becoming aware his/her client is being less than fully honest, or participating in the process in bad faith. For instance, if documents are altered or withheld, or if a client is deliberately delaying matters for economic or other gain, the solicitors have promised in advance that they will withdraw and will not continue to represent the client. The same is true if the client fails to keep agreements made during the course of negotiations.

8 How do I know whether it is safe for me to work in the Collaborative Family Law process?

The Collaborative Family Law process does not guarantee you that every asset or every pound of income will be disclosed, any more than the conventional litigation process can guarantee you that. In the end, a dishonest person who works very hard to conceal money can sometimes succeed, because the time and expense involved in investigating concealed assets can be high, and the results uncertain. However, far greater efforts to track down concealed assets and income can be expected in conventional litigation than in Collaborative Family Law, which relies upon voluntary disclosure.

You are generally the best judge of your spouse's or partner's basic honesty. If s/he would lie on an income tax return, s/he is probably not a good candidate for a Collaborative Family Law settlement, because the necessary honesty would be lacking. But if you have confidence in his or her basic honesty, then the process may be a good choice for you. The choice ultimately is yours.

9 Is Collaborative Family Law the best choice for me?

It isn't for every client (or every solicitor), but it is worth considering if some or all of these are true for you:

You want a civilized, respectful resolution of the issues.

You would like to keep open the possibility of friendship with your spouse/partner down the road.

You and your spouse/partner will be co-parenting children together and you want the best co-parenting relationship possible.

You want to protect your children from the harm associated with court proceedings between parents.

You and your partner have a circle of friends or extended family in common that you both want to remain connected to.

You have ethical or spiritual beliefs that place high value on taking personal responsibility for handling conflicts with integrity.

You value privacy in your personal affairs and do not want details of your problems to be available in the public court record.

You value control and autonomous decision-making and do not want to hand over decisions about restructuring your financial and/or child-rearing arrangements to a stranger, i.e., a judge.

You recognise the restricted range of outcomes and "rough justice" generally available in the public court system, and want a more creative and individualised range of choices available to you and your spouse or partner for resolving your issues.

You place as much or more value on the relationships that will exist in your restructured family situation as you place on obtaining the maximum possible amount of money for yourself.

You understand that conflict resolution with integrity involves not only achieving your own goals but finding a way to achieve the reasonable goals of the other person.

You and your spouse/partner will commit your intelligence and energy toward creative problem-solving rather than toward recriminations or revenge - fixing the problem rather than fixing blame.

10 My solicitor says she settles most of her cases. How is Collaborative Family Law different from what she does?

Any experienced collaborative solicitor will tell you that there is a big difference between a settlement that is negotiated during the conventional litigation process, and a settlement that takes place in the context of an agreement that there will be no court proceedings or even the threat of court. Most conventional family law cases settle figuratively, if not literally, "on the courthouse steps." By that time, a great deal of money has been spent, and a great deal of emotional damage can have been caused. Settlements are reached under conditions of considerable tension and anxiety, and both "buyer's remorse" and "seller's remorse" are common. Moreover, settlements are reached in the shadow of a court hearing, and are generally shaped largely by what the solicitors believe the judge in the case is likely to do.

Nothing could be more different from what happens in a typical Collaborative Family Law settlement. The process is geared from day one to make it possible for creative, respectful collective problem solving to happen. It is quicker, less costly, more creative, more individualised, less stressful, and overall more satisfying in its results than what occurs in most conventional settlement negotiations.

11 Why is Collaborative Family Law such an effective settlement process?

Although traditional negotiation is a genuine attempt to resolve matters by agreement it can be adversarial and lead to misunderstandings. Clients often feel distant from the negotiations and mistrust can develop. Clients sometimes find the process of traditional negotiation very threatening. Collaborative lawyers do not allow the atmosphere of the process to be threatening nor do they focus on the negative either in their own clients or on the other side. They expect and encourage the highest good-faith problem-solving behaviour from their own clients and themselves, and they stake their own professional integrity on delivering that. Collaborative solicitors trust one another. They still owe a primary allegiance and duty to their own clients, within all mandates of professional responsibility, but they know that the only way they can serve the best interests of their clients is to behave with, and demand, the highest integrity from themselves, their clients, and the other participants in the collaborative process. Collaborative Family Law offers a greater potential for creative problem solving than does litigation, in that only Collaborative Family Law puts two solicitors in the same room pulling in the same direction with both clients to solve the same problems. Solicitors excel at solving problems, but in conventional litigation they generally pull in opposite directions. No matter how good the solicitors may be for their own clients, they cannot succeed as collaborative solicitors unless they also can find solutions to the other party's problems that both clients find satisfactory. This is the special characteristic of Collaborative Family Law that is found in no other dispute resolution process.

12 What if my spouse and I can reach agreement on almost everything, but there is one point on which we are stuck? Would we have to lose our collaborative solicitors and go to court?

In that situation it is possible, if both solicitors and both clients agree to submit just that one issue for decision by a third party. We do this with important limitations and safeguards built in, so that the integrity of the Collaborative Family Law process is not undermined. Everyone must agree that the good faith atmosphere of the Collaborative Family Law process would not be damaged by submitting the issue for third party decision, and everyone must agree on the issue and on who will be the decision-maker.

13 What if my spouse or partner chooses a solicitor who doesn't know about Collaborative Family Law?

If your partner or spouse does not consult another Collaborative lawyer, your own lawyer can still work cooperatively with the other lawyer to achieve an agreement on your behalf and to do so he may use some of the skills he has acquired as a Collaborative lawyer. However, the process will be one involving conventional negotiation. This is because Collaborative Law involves specific steps and undertakings which are known only to lawyers who are trained in the collaborative process and therefore requires both of the lawyers involved to be Collaborative lawyers.

Similarly, Collaborative Family Law demands special skills from the solicitors - skills in guiding negotiations, and in managing conflict. Solicitors need to study and practice to learn these new skills, which are quite different from the skills offered by conventional adversarial solicitors. Without them, a solicitor would have a hard time working effectively in a Collaborative Family Law negotiation.

14 Why is it so important to sign on formally to the official Collaborative Family Law Agreement?

The special ability that Collaborative Family Law has to generate creative conflict resolution seems to happen only when the solicitors and the clients are all pulling together in the same direction, to solve the same problems in the same way. If the solicitors can still consider unilateral resort to the courts as a fallback option, their thought processes do not become transformed; their creativity is actually crippled by the availability of the court. Only when everyone knows that it is up to the four of them and only the four of them to think their way to a solution, or else the process fails and the solicitors are out of the picture, does the special creativity of Collaborative Family Law get triggered.

Collaborative Family Law is not just two solicitors who like each other, or who agree to "behave nicely." It is a special technique that demands special talents and procedures in order to work as promised.

Any effort by parties and their solicitors to resolve disputes cooperatively and outside court is to be encouraged, but only Collaborative Family Law is Collaborative Family Law.

15 How do I enlist my spouse/partner in the process?

Talk with your spouse or partner, and see whether there is a shared commitment to collaborative, win-win conflict resolution. Share information with your spouse/partner such as this handbook and articles that discuss Collaborative Family Law. Encourage your spouse/partner to select a solicitor who has experience and training in Collaborative Family Law and who works effectively with your own solicitor.

16 How long does the collaborative process take?

The Collaborative Family Law process is flexible and can expand or contract to meet your specific needs. Most people require from three to seven of the four-way negotiating meetings to resolve all issues. These meetings can be spaced with long intervals between, or close together, depending on the particular needs of the clients. Once the issues are resolved, the solicitors will complete the paperwork for the divorce or dissolution of civil partnership. Time limits and requirements for divorce/dissolution may determine when it can be processed.

17 How expensive is Collaborative Family Law?

Collaborative solicitors charge by the hour in the same way as conventional family solicitors. Rates vary from area to area and according to the experience of the solicitor.

Whatever kind of dispute resolution you use, no one can predict exactly what you will pay for this kind of representation because every case is different. Your issues may be simple or complex; you and your partner may have already reached agreement on most, or none, of your issues. You may be very precise or very casual in your approach to problems. You and your partner may be at very different emotional stages in coming to terms with separating from one another. What can be said with confidence is that no other kind of professional conflict resolution is likely to be as efficient as Collaborative Family Law.

18 Which solicitors in your area are trained as Collaborative Family Lawyers?

You will find them listed on a separate insert or on the website detailed below.