

What is Collaborative Family Law?

By Karim Mawani

To live through an impossible situation, you do not need the reflexes of a Grand Prix driver, the muscles of a Hercules, the mind of an Einstein.

You simply need to know what to do next.

Anthony Greenbank “ The Book of Survival”.

Imagine sitting in a room. Around you people are talking. They speak a language you understand but you cannot understand all of the words they say. Nor can you understand why their ideas and discussions apply to you and your life. They are also not interested in what you have to say.

Now imagine being in that same room except this time sitting beside you is someone who can help you understand everything that is being said and is interested in helping you express your thoughts.

This, in its essence, is the difference between litigation and collaborative law. In litigation the lawyer is your mouthpiece. The court is not interested in hearing from anyone except the lawyers and your point of view has no place in the courtroom – where, after all, the real decisions are made. In collaborative law your lawyer is a mixture of legal counsel, negotiation coach, confidant and camel. Also in collaborative law your opinion, views and wishes are important because you, along with your spouse, are the decision makers.

Collaborative law is the thinking persons answer to dispute resolution. The parties, who after all have to live by the decisions made, are assisted in how best to find a solution agreeable to everyone at the negotiation table. Part mediation, part negotiation and part therapeutic venting session, the collaborative law meetings focus on arriving at win – win solutions to lose – lose problems. Add a smattering of legal advice and sage counsel and you have the beginnings of a respectful, party sensitive way to transitions between two life stages.

Let's go back to the room. In addition to the lawyers are other professionals – financial experts, psychologists whose expertise is children's needs in divorce and family breakdown and divorce coaches. Their task is to gather as much information as they can. But here the similarity ends. In litigation the emphasis is in each expert gathering selective and sensitive information focused on proving one party (whomsoever is paying them) to be better and more deserving than the other. Selecting evidence that supports one case and disregarding or down playing the rest. In collaborative law the emphasis is on a jointly agreed expert gathering and analyzing the information to assist the parties not in deciding who is more correct or deserving but in deciding for themselves how best to redefine their future relationship (no matter how much you might want it to be otherwise divorce rarely ends all aspects of a relationship especially if children are involved) with a 'go forward' rather than 'looking back' perspective.

After the storm of your divorce has passed life will continue. How sensible is it to intentionally dismantle the ship so that the other person is forced to swim – for that is

what you do with the economic and emotional devastation caused by litigated divorces – rather than get help to minimize the damage, weathering and navigating the stormy waters with expert help and advice that focuses on both of you still being afloat when the storm has blown through.

So why is a collaborative lawyer like a camel? Because they can keep you moving towards your destination as the sand seems to shift underfoot, help carry the load when it seems that respite is nowhere near and they can tell you whether the paradise you seek is a mirage or an attainable and real destination.

Either way you will reach your destination – being divorced. But what price are you prepared to pay once the present roars of your anger and need for retribution have become a distant purr and the reality of the situation comes into sharp focus as the next phase of your life unfolds.

Your life should be a story to be told, not judged.