

Protocols of the Association of Collaborative Family Lawyers (Calgary)

The following protocols are guidelines designed to ensure the highest likelihood of success for collaborative law clients in reaching acceptable agreements. While it is recognized that in the circumstances of any given case, it may not be practicable or even possible to follow these protocols fully, it is important that each member of the Association be able to assure their client that the other party will also be counselled in a manner consistent with these protocols and that the other counsel will also be striving to achieve the same ends and to carry on negotiations in the same principled fashion.

In handling a Collaborative Family Law case, Association members will:

1. In an initial interview with a client:
 - a. Provide an overview of the range of process options available to a client including the process of collaborative law;
 - b. Explain the collaborative law process and in particular
 - i. Review the Association's form of Collaborative Law Agreement;
 - ii. Advise of the collaborative process goals of
 - (1) Facilitating constructive communication;
 - (2) Ensuring full disclosure;
 - (3) Maximizing possible outcomes;
 - (4) Creating a safe environment;
 - (5) Maintaining the primacy of the best interests of children;
 - c. Ensure the client's acceptance of and commitment to the terms of the Collaborative Law Agreement, including its Groundrules; and
 - d. If the other party has not yet retained a member of the Association to act on their behalf, provide the client with the Association's brochure and a current list of qualified collaborative lawyers (Registered Collaborative Family Lawyers) for provision to the other party, and review with the client how collaborative law can be presented to the other party.
 - e. Provide basic legal advice, as required of a legal advisor, without proposing or promoting positions to be taken in negotiating agreement terms.
2. In preparing a client for a first four-way meeting:
 - a. Review again, in as much detail as needed, the Collaborative Law Agreement and its Groundrules;
 - b. Prepare the client for how lawyers can be expected to act and for what is expected of clients;
 - c. Review the needs and interests of the client and the expected needs and interests of the other party, both substantive and procedural, and in particular, identify any pressing needs;
 - d. Assist the client to identify his/her specific needs, interests, priorities, goals, motivations and sources of satisfaction for presentation to the other party;

- e. Encourage the client to avoid developing or promoting specific positions until all facts have been mutually collected and all options generated and mutually explored;
 - f. Advise of the initial agenda to set the tone of negotiations, mutually identify issues and commence exchanging all facts possibly helpful to either party, but not to negotiate prematurely; and
 - g. Estimate likely issues and identify all facts that are expected to be helpful to either party and commence collecting documentation for disclosure.
3. Meet, or have a telephone conversation, with the other counsel prior to the first four-way meeting to:
- a. Agree on the location, seating and facility arrangements most likely to be effective in light of client needs;
 - b. Exchange expected client needs and interests and make preliminary identification of expected issues and areas of agreement;
 - c. Identify pressing issues;
 - d. Agree on any procedures needed to accommodate client concerns;
 - e. Agree on an agenda and mutual goals for the first session, ensuring pressing needs are addressed; and
 - f. Commit to bringing as much data to the first meeting as available.
4. At the first four-way meeting:
- a. Set a safe and positive atmosphere by:
 - i. Seeking to establish a rapport with the other party by
 - (1) Introducing oneself;
 - (2) Reviewing commitment to non-adversarial outcome and the need for any agreement to meet both parties' needs; and
 - (3) Demonstrating interest and concern for the other party's interests and feelings;
 - ii. Reviewing together and then signing the Collaborative Law Agreement, including its Groundrules;
 - iii. Identifying and agreeing on any further groundrules needed by the parties; and
 - iv. Identifying and stressing the parties' mutual interests such as cost, time, privacy, children's welfare, protection from unilateral action, safety, being heard and understood.
 - b. Mutually identify the issues, and all areas of agreement by:
 - i. Assisting the parties to communicate their goals, needs, and interests by reframing them in a positive, constructive, non-positional manner;
 - ii. Ensuring that the parties know they are heard and understood by active listening;
 - iii. Recording or stressing all areas of agreement;

- iv. Not seeking to resolve areas of disagreement, but just noting them as issues to be addressed and normalizing the existence of such issues; and
 - v. Identifying any pressing issues needing immediate attention.
- c. Attend to pressing issues by:
- i. Resolving what is essential on a temporary, non precedent setting basis, subject to retroactive revision, to meet immediate needs and leaving the broadest possibilities open for both parties for global settlement; and
 - ii. Using an abbreviated version of the interest-based negotiation process to reach resolution by:
 - (1) Identifying the issues as narrowly as possible;
 - (2) Obtaining all readily available data;
 - (3) Identifying the underlying interests;
 - (4) Generating the most options in the time available;
 - (5) Choosing the best option.
- d. Gather and exchange all available information and identify further data or documents needed for future meetings and commit to obtaining them and where not readily settled, avoid disputes over which party's version of the facts is correct; rather, honour each party's perspective or belief (and later use both versions of fact to generate a wider range of possible outcomes).
5. At the first and further four-way meetings as required:
- a. Identify the needs and interests underlying the issues for both parties and ensure these are communicated and understood by both parties by:
 - i. Both members' helping both parties to understand, communicate and clarify their real needs, motivations, goals, and intentions and ensuring the other party knows the member is seeking to understand the other party with a view to finding an acceptable way to satisfy their interests; and
 - ii. Identifying which of the interests are shared by both parties or are compatible with those of the other party.
 - b. Generate as wide a range of options as possible that will respond to each party's interests and goals and maximize the value to be divided by:
 - i. Analyzing the data together to identify
 - (1) the maximum value for exchange and
 - (2) the widest range of options;
 - ii. Refraining from prejudging possible options prematurely;
 - iii. Reviewing the Law
 - (1) as one source of an objective, reasonable range of outcomes;
 - (2) candidly and openly as to the range of outcomes on the facts as each party in turn perceives them. (The goal is to identify a

- range of options, not to estimate which facts will most likely succeed in court); and
 - (3) noting it has limited scope and flexibility and only represents some of many possible outcomes and may not always be the best one for the parties;
 - iv. Identifying limiting factors beyond the control of the parties; and
 - v. Reviewing the parties' own creative options.
- c. Support the outcome which best meets the needs of both parties and is acceptable to each by:
- i. Avoiding simple compromise unless limited by time or resources necessitate it;
 - ii. Evaluating possible solutions to best meet the identified needs and evaluating how to best divide the benefits using criteria meaningful to the parties; and
 - iii. Assisting the clients to develop a comprehensive settlement model that addresses and accommodates each party's interest to a sufficient degree to be acceptable to both parties.
6. Communicate with the other member prior to and after each four-way meeting to evaluate the previous session and plan how to optimize further sessions.
7. If agreement is reached, draw up a settlement agreement for the parties to sign and then implement in court proceedings on a consent basis.
8. A member may file court documents and become counsel of record for a collaborative law client only with the agreement of all signatories to the Collaborative Law Agreement. In most cases court proceedings will not be initiated until the parties have reached a global settlement through the Collaborative Family Law process, with divorce or other documents then being filed on a consent basis.
9. If a member is counsel of record on a matter where the client wishes to switch to a collaborative law retainer, the member shall remove him/herself from the court record prior to signing a Collaborative Law Agreement.

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[Revised February 2005]