

TAB 10

Appendices

Collaborative Family Law Practice



The Law Society of
Upper Canada | Barreau
du Haut-Canada

CONTINUING LEGAL EDUCATION

BRINGING THE LAW INTO THE COLLABORATIVE PROCESS

Whether we like it or not, the law carries great weight in collaborative work. While legal advice can narrow thinking, lead to position taking, and even derail the process, it can also redress power imbalances, stimulate clients to value and prioritize their interests and provide societal norms of fairness. Collaborative lawyers have an obligation to ensure their clients fully understand all available choices, including the legal model - which is also a requirement for the binding agreements most clients want.

So the question is not whether to introduce the law, but rather when and how.

The following are suggestions for bringing the law into the collaborative process effectively.

Information or advice?

- Both!
- In early stages, give legal information regarding the historical perspective of the law (how the law developed and why), legal principles, issues to be resolved, explaining areas of judicial discretion and uncertainty, with outcomes (if any) discussed in a broad range of possibilities.
- Present the law as providing default resolution criteria for parties who are unable to resolve matters themselves.
- Explain the limitations of the legal model, including the lack of ability to customize outcomes or provide a clear mechanism for future change.
- Explain the law may provide a benchmark for fairness.
- Don't defer questions about the law, but answer them generally rather than providing specific outcomes.
- If one party seeks a result well outside the ambit of the law, and contrary to the stated interests of the other, the legal model may be used as a reality check and to provide an objective standard of fairness.
- At the stage of considering the client's BATNA, it may be necessary to provide more specific legal advice to the client individually (along with the costs and process for pursuing the legal option).

Gathering financial information

- Be wary of the use of court financial forms which require position-taking about such matters as the date of separation, values of assets or debts, ownership interest and disposition of property, etc.
- The extent of financial information to be collected and the method for recording and presenting financial information should be decided by the group in advance.
- Court financial forms may be intimidating for some clients, and not user-friendly for others who would prefer to use home budgets or excel spreadsheets.
- Discuss assets and debts as a group to determine areas of agreement, need for valuation, and the goals and hopes for homes, cottages, retirement vehicles, the management of debt and the like.
- Court financial statements and net family property statements may be used in the collaborative process on agreement and with appropriate clarification that they are being used to organize and collect information, not to determine results. Consider blanking out totals in the net family property statement as information is being collected and documented. Consider using the budget portion of the financial statement only to establish current or proposed expenses.
- If computer generated support calculations are to be prepared, do so only with the prior agreement of all participants and consensus as to the range of calculations to be prepared and the assumptions to be made.

Work with the other lawyer

- The lawyers should discuss in advance the parameters of legal advice and information they have conveyed to their respective clients.
- The lawyers should share in advance which issues they anticipate will be challenging and develop the most useful approach to work with each set of clients.
- The lawyers should prepare in advance how and when to present the legal model, and choreograph how to present legal principles and draw out interests and concerns.
- The lawyers should discuss in advance their opinions as to the legal issues to determine whether or not there is consensus. When the lawyers agree as to the legal model, they can present a range of possible outcomes and the criteria that would affect outcome. When the lawyers do not agree as to the legal model, they may highlight the uncertainty

of outcomes available under the law as well as the ability to achieve certainty in collaborative negotiation.

- As often as possible, provide legal advice and information in the settlement meetings to ensure both clients receive the same legal information and advice. It will usually be necessary to follow up with the client individually to ensure a full understanding of the information received and to assess options.
- Use every effort to avoid surprising the other lawyer and client.
- Never debate or argue the law - discuss and dialogue instead.
- Unless agreed to in advance, do not write letters to be copied to clients setting out legal opinions.

Be self aware

- Be aware that we deliver legal information and advice all the time in many ways.
- Be aware of what our clients actually hear by using active listening and confirming their understanding.
- Watch our language. Words like “give up” and “sacrifice” which can trigger strong emotions and are value laden.
- Be aware of our own relationship with the law. Do we really believe the law is one equal option of many? Or are we sending a message that we place greater importance on legal entitlements than the clients’ expressed interests and the options they have developed?

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September 21, 2004

My thanks to Sharon Cohen who assisted in developing some of these ideas.

Questions Clients Ask About Collaborative Family Law

Q: Why can't you go to court if I need to? Why should I retain you as a CFL lawyer when I can retain a lawyer to do the whole job?

A: When litigation is an option, we lawyers tend to go to court when we encounter problems. If we take a case that may go to court, we have to spend time preparing to go to court, just in case. Lawyers involved in a litigation case act differently, follow different procedures and involve the parties less than a collaborative case. When the parties have given up the right to go to court, all of the lawyer's problem-solving abilities are focused solely on settlement. When court is not an option, the parties and their lawyers stay at the table and keep talking, and are able to come up with creative settlements that are far better and more customized than a court could create. Even if the collaborative process doesn't succeed and you have to go to court, you have had the best of all worlds – a lawyer who specializes in settlement and, if trial is necessary, a lawyer who specializes in court. It is rare for a lawyer to be extremely skilled in both settlement and trial.

Q: I'm interested in CFL, but my husband and I aren't talking and I am worried he won't listen to me. Is CFL for us?

A: When people go through a divorce their minds are very busy dealing with a lot of unknowns. People usually feel very worried and fearful about their future. It's hard to get the psychological space to think and make good decisions. It's also usually really hard to communicate with each other. People going through a divorce often feel that they have one foot caught in the railroad tracks with a train coming¹. In the collaborative

process, you'll have time to breathe deeply, think and make the best possible decisions. I'll be there to support you, to keep the negotiating space safe and clear. There'll be no yelling, intimidation or disrespectful behaviour. The other lawyer will be helping your husband do this too. Often, once this negotiation climate is established, and once each person realizes that the goal is to get both of your needs met, each person can begin to really listen to the other and to move forward successfully.

Q: How do the costs of CFL compare with mediation or court?

A: CFL is far cheaper than a matter that goes to trial. Although many court matters settle before trial, court costs are often between \$20,000.00 and \$50,000.00 for each side. Some people think that mediation is cheaper than collaborative law because the parties share the cost of the mediator as opposed to each paying their own collaborative lawyers. This is often true. However, some people require that their lawyers be quite involved while they go through mediation, providing legal advice and perhaps attending the mediation sessions. If this happens, mediation may not be cheaper than CFL. Although we cannot predict the costs of the collaborative process, given that the number of meetings will vary depending on the complexity of the issues and the dynamics between the parties, fees usually range from about \$5,000.00 to \$18,000.00 for each side, with most people spending about \$8,000.00 to \$10,000.00 each for a comprehensive settlement of all of the issues. We suggest that you choose mediation or collaborative law based on which process you think is most appropriate for you, rather than because one may be cheaper than the other.

Q: My lawyer says he settles most of his cases. How is collaborative law different from settling a traditional legal case?

A: While most family cases do settle before trial, many settle after much money has been spent and emotional trauma endured. Often, settlements are reached while everyone is under stress, to avoid the next courtroom process or a trial. The settlement is created by the lawyers based on their prediction as to what will happen in court. In CFL, from the outset, all efforts are made toward settlement. The settlements are created to satisfy your needs and interests, not according to what a judge might say. You and your partner, not the lawyers, create the settlement. Negotiations are respectful and open rather than secretive and adversarial. Unlike court, which is scheduled according to the lawyer's and the court's timetable, CFL meetings are scheduled to suit you and your spouse. You will both have time to think and make good decisions. CFL settlements are customized to suit your particular family, are arrived at more quickly and usually with less cost than settlements reached in a traditional negotiation.

Q: How do I know if CFL is for me?

A: Collaborative law will be of interest to you if:

1. You and your partner want to keep control over the decisions made about you and your family, rather than giving authority for decision-making over to a lawyer or a judge.
2. You and your partner accept that the other person has legitimate needs and interests that must be addressed as well as your own.
3. You place high value on a civilized divorce process.
4. You want a positive relationship between you and your partner.
5. You want to protect your children from emotional damage often caused by a separation.

6. You and your partner wish to be able to co-parent your children effectively in the future.
7. You and your partner are both willing to exchange all important information.
8. You want to keep control over the costs of the divorce process.
9. You want a customized solution that suits you and your family, rather than a more generic court-house result.
10. You and your partner have come to terms with your separation and are willing to take responsibility for creating a positive divorce experience.

Q: How do I know my partner will be honest and won't hide information?

A: There are no guarantees of honesty in any legal process. CFL relies on undertakings by both parties to make voluntary disclosure of all important information. CFL lawyers do not focus on rooting out hidden assets or income. Although you may see any financial documentation you feel is important, if you do not trust in the basic honesty of your partner, CFL is likely not appropriate for you. Remember that the cost to find hidden assets is often very high. Regardless of the process you choose, you will need to conduct a cost-benefit analysis and decide whether such a search is worth the effort. A CFL lawyer will withdraw or terminate the process if she feels her client is refusing to make full disclosure. There is no such requirement in a traditional negotiation.

Q: What if we settle everything but one issue in CFL – do we have to lose our lawyers to go to court?

A: If all but one or two issues have been resolved in the CFL process, it is possible to refer those issues to an arbitrator, provided the facts are agreed and everyone agrees to the arbitration process and the arbitrator.

Q: Which is more appropriate for us - mediation or CFL?

A: Mediation is appropriate for partners who can negotiate on their own behalf with the help of a neutral third party who does not provide legal advice. They are willing to consult with their lawyers when needed and to take their mediated agreement to their lawyers for legal advice before it is confirmed. CFL is appropriate for those who want to negotiate for themselves, but want their lawyers with them every step of the way to provide legal advice and negotiation support. CFL may also be suitable where the issues are technical or complex, there is a perceived power imbalance between the parties, where there has been past abuse, or where there are strong emotions and low trust.

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**Excerpted from Collaborative Family Law: Another Way to Resolve Family Disputes
by Richard W. Shields, Judith P. Ryan and Victoria L. Smith, Carswell**

The IACP Standards for Trainers, Trainings, and Practitioners are drafted with an awareness of the aggregate nature of learning. Knowledge comes from the interface between education and practical experience. Skill is acquired from the successive application of education to experience. With those principles in mind, these Standards should be understood as a point of departure in a continuing journey of education and practice for Collaborative Practitioners and Trainers.

INTERNATIONAL ACADEMY OF COLLABORATIVE PROFESSIONALS

MINIMUM STANDARDS FOR COLLABORATIVE PRACTITIONERS

The IACP sets the following basic requirements for a professional to hold herself/himself out as a Practitioner who satisfies IACP Standards for Collaborative Practice in family related disputes.

1. General Requirements:

- 1.1 The collaborative practitioner is a member in good standing of:
 - IACP; and
 - A local Collaborative Practice group.
- 1.2 The collaborative practitioner accepts the IACP Mission Statement.
- 1.3 The collaborative practitioner diligently strives to practice in a manner consistent with the:
 - IACP Principles of Collaborative Practice; and
 - IACP Ethical Standards for Collaborative Practitioners.
- 1.4 The basic trainings referred to in 2.2, 3.3 and 4.3 must be trainings that meet the IACP Minimum Standards for trainings delivered by trainers who meet the IACP Minimum Standards for Trainers.

2. IACP Minimum Standards for Collaborative Lawyer Practitioners:

- 2.1 Membership in good standing in the administrative body regulating and governing lawyers in the lawyer's own jurisdiction

- 2.2 At least twelve hours of basic collaborative training to be either:
- Collaborative law training; or
 - Interdisciplinary collaborative training.
- 2.3 At least one thirty hour training in client centered, facilitative conflict resolution, of the kind typically taught in mediation training (interest-based, narrative or transformative mediation programs).
- 2.4 In addition to the above, an accumulation or aggregate of fifteen further hours of training in any of the following areas:
- Interest-based negotiation training
 - Communication skills training
 - Collaborative training beyond minimum twelve hours of Initial Collaborative training
 - Advanced mediation training
 - Basic professional coach training.

3. IACP Minimum Standards for Collaborative Mental Health Practitioners

- 3.1 Mental Health professional license in good standing in one of the following:
- PhD - Doctor of Philosophy
 - Psy D - Doctorate of Psychology
 - LCSW - Licensed Clinical Social Worker
 - RSW - Registered Social Worker
 - MFT - Marriage and Family Therapist
 - RCC - Registered Clinical Counsellor
 - CCC - Canadian Clinical Counsellor
 - R Psych - Registered Psychologist
 - C Psych - Chartered Psychologist
 - Psychiatrist
 - LEP - Licensed Educational Psychologist
 - LPC - Licensed Professional Counsellor

or equivalent in state, province or country

- 3.2 Background, education and experience in:
- Family systems theory
 - Individual and family life cycle and development
 - Assessment of individual and family strengths
 - Assessment and challenges of family dynamics in separation and divorce

- Challenges of restructuring families after separation
 - For child specialists: expertise in child development, clinical experience with a specialty focus on children and an in-depth understanding of children's unique issues in divorce
- 3.3 At least twelve hours of initial interdisciplinary collaborative training.
- 3.4 At least one thirty hour training in client centered, facilitative conflict resolution, of the kind typically taught in mediation training (interest-based, narrative or transformative mediation programs).
- 3.5 In addition to the above, an accumulation or aggregate of fifteen hours of training in any or all of the following areas:
- Basic professional coach training
 - Communication skills training
 - Collaborative training beyond minimum twelve hours of initial collaborative training
 - Advanced mediation training
- 3.6 A minimum of three hours aimed at giving the mental health professional a basic understanding of family law in his/her own jurisdiction

4. IACP Minimum Standards for Collaborative Financial Practitioners

- 4.1 Professional license or designation in good standing in one of the following:
- CFP® - Certified Financial Planner™
 - CPA - Certified Public Accountant
 - CA - Chartered Accountant
 - CMA - Certified Management Accountant
 - CGA - Certified General Accountant
 - ChFC - Chartered Financial Consultant
- or equivalent in state, province or country

- 4.2 Background, education and experience in:
- Financial aspects of divorce
 - Cash management and spending plans
 - Retirement and pension plans
 - Income tax
 - Investments
 - Real estate
 - Insurance
 - Property division
 - Individual and family financial planning concepts
- 4.3 At least twelve hours of basic interdisciplinary collaborative training
- 4.4 In addition to the above, an accumulation or aggregate of twenty hours of education in the financial fundamentals of divorce giving the financial professional a basic understanding of family law in his/her own jurisdiction, including:
- Divorce procedures
- Property - valuation and division
 - Pensions and retirement plans
 - Budgeting - income and expenses
 - Child and spousal support
 - Future income projections
 - Financial implications of different scenarios for settlement
- 4.5 At least one thirty hour training in client centered, facilitative conflict resolution, of the kind typically taught in mediation training (interest-based, narrative or transformative mediation programs).
- 4.6 In addition to the above, an accumulation or aggregate of fifteen hours of training in any or all of the following areas:
- Communication skills training
 - Collaborative training beyond minimum twelve hours of initial collaborative training
 - Advanced mediation training
 - Basic professional coach training

The IACP Standards for Trainers, Trainings, and Practitioners are drafted with an awareness of the aggregate nature of learning. Knowledge comes from the interface between education and practical experience. Skill is acquired from the successive application of education to experience. With those principles in mind, these Standards should be understood as a point of departure in a continuing journey of education and practice for Collaborative Practitioners and Trainers.

INTERNATIONAL ACADEMY OF COLLABORATIVE PROFESSIONALS

MINIMUM STANDARDS FOR COLLABORATIVE TRAINERS

The IACP sets the following basic requirements for a professional to hold herself/himself out as a Trainer who satisfies IACP Standards for Training in Collaborative Practice

1. Experience:

- 1.1 A trainer should have participated in at least eight different collaborative cases, accumulating at least fifty hours of practice in the collaborative process. For interdisciplinary team trainers, such cases and hours shall include a minimum of five cases and twenty-five practice hours in the interdisciplinary team model.
- 1.2 A trainer should, during the five years immediately prior to the training, have had at least twenty hours of actual, hands-on experience as a teacher, trainer, or presenter of programs each of which was at least three hours in duration. Such experience shall be as a person primarily responsible for the presentation of all or significant components of such programs.
- 1.3 A trainer should have completed at least twenty-four hours of training in the collaborative process. Not less than twelve of such hours shall include 1) a basic training that satisfied the IACP Training Standards and 2) a training of at least six hours directed at that trainer's professional discipline. The additional twelve hours may be earned by participating, as a student or assistant, in Collaborative Practice trainings conducted by trainers who satisfy these Trainer Standards.

2. **IACP Practitioner Standards:** A trainer should satisfy the highest IACP practitioner standards. A trainer should have completed at least forty hours of mediation training approved by ACR or approved for continuing education credits by professional organizations. When training in the divorce area, such mediation training shall include a substantial amount of divorce mediation.
3. **Licensing/Certification:** A trainer shall be licensed or certified, and be in good standing, as required for the trainer's field of practice. A trainer shall have no public record of discipline or censure.
4. **IACP Training Standards:** A trainer should have the skills to conduct a training that meets the IACP Training Standards.
5. **Skills Training:** A trainer should be qualified by education, training, and experience to inform and educate about skills relative to communication, problem-solving, facilitative dispute resolution, mediation, interpersonal relationships, couples' conflict management and resolution, interest based negotiation, team, and process. A trainer should be able to teach adults through meaningful dialogue and didactic presentations, and be able to set up demonstrations, structure role plays, and employ other experiential learning models.
6. **Knowledge about Area of Dispute:** A trainer should have an appropriate understanding of the general area to which the dispute relates, including, a recognition that financial decisions may have far-reaching and long-term financial and tax implications and, when training in the divorce area, knowledge of the grief process, child development, and the dynamics of the divorcing/restructuring family.
7. **Particular Professions:** In addition to the above, those offering training in particular disciplines as part of the collaborative process shall satisfy the following:
 - 7.1 **Attorneys:**
 - A minimum of five years in active practice, including five years of experience in the particular discipline which is the subject of the training (e.g., five years of family law experience for collaborative trainings dealing with divorce and separation).

7.2 Child Specialist:

- A minimum of five years clinical experience with specialty focus on children.
- In-depth understanding of children's unique issues in divorce.

7.3 Financial

- A minimum of five years in financial consulting with significant experience in assisting separating and divorcing couples specifically with respect to the financial and tax aspects of the general area to which the dispute relates.

7.3 Coaches:

- A minimum of five years of post-licensure experience in a clinical area, including clinical experience focusing on couples and families, and in-depth knowledge of: 1) short-term therapy and coaching models, 2) divorce and the psycho-social impact of divorce on families, and 3) basic elements and guidelines for creating parenting plans.
- In depth knowledge of family dynamics and systems theory and child development.

8. Trainers in the Interdisciplinary Model of Collaborative Practice: The interdisciplinary model of Collaborative Practice includes the mental health, financial, and legal disciplines as part of the fundamental collaborative team assisting clients. In addition to the above, a trainer in the interdisciplinary team model should have:

- 8.1** Completed a minimum of one basic interdisciplinary team training.
- 8.2** Knowledge of team interactions and specific issues unique to the interdisciplinary model.

The IACP Standards for Trainers, Trainings, and Practitioners are drafted with an awareness of the aggregate nature of learning. Knowledge comes from the interface between education and practical experience. Skill is acquired from the successive application of education to experience. With those principles in mind, these Standards should be understood as a point of departure in a continuing journey of education and practice for Collaborative Practitioners and Trainers.

INTERNATIONAL ACADEMY OF COLLABORATIVE PROFESSIONALS

MINIMUM STANDARDS FOR A COLLABORATIVE BASIC TRAINING

A training in the collaborative process satisfies the minimum IACP Standards for a "Basic Training" when it meets the following criteria:

A "Basic Training" in the collaborative process is a training or work shop consisting of at least six hours of education. (Minimum Collaborative Practitioner Standards can be met by either one twelve hour Basic Training or two six hour Basic Trainings).

1. At the completion of "Basic Training", a participant should have knowledge of the theories, practices, and skills needed to begin Collaborative Practice.
2. In particular, participants should be exposed to and educated about:
 - 2.1 The collaborative model, both as a dispute resolution mechanism and as a process for modeling the skills and tools necessary for the positive reconstruction of interpersonal relationships.
 - 2.2 Negotiation theory, including the characteristics of competitive and interest-based negotiation.
 - 2.3 Dynamics of interpersonal conflict.
 - 2.4 Effective communication skills, particularly in the divorce context.
 - 2.5 Team building skills [whether lawyer-centric or broader team] with respect to the clients and collaborative colleagues.
 - 2.6 The legal, financial, psychological, and emotional elements of the clients' circumstances.

- 2.7 The interdisciplinary team approach and the contribution and roles of each profession.
- 2.8 Depending on the participants' experience: Different ways of beginning and developing collaborative practices in the participants' unique community.
- 2.9 How to assess one's own level of understanding of "knowledge" (comprehension) and the limits of one's own competence with a willingness to seek assistance from more experienced practitioners
- 2.10 One's ability and limitations to effectively assess the capacity of the client for effective participation in the collaborative process.
- 2.11 Organizational considerations in running a collaborative case [e.g. how to establish a Collaborative Practice matters to be covered at and before the first group meeting, enrolling the other party, identifying interests and client agendas, etc.].
- 2.12 Ethical considerations including integrity, professionalism, diligence, competence, and confidentiality, including a knowledge of the specific ethical considerations of each profession.
- 2.13 Meaningful material to support all of the objectives.
- 2.14 Dynamics of divorcing and restructuring families.
- 2.15 Divorce as a common family transition.
3. A Basic Training should include multiple learning modalities — interactive, experiential, and lecture elements: e.g., demonstrations, role play, small group exercises, dialogue between and among trainer[s] and participants, fish bowl, musical chairs fish bowl, communication, team building, negotiation games.
4. A Basic Training should include written materials that are useful for reference and practice by the collaborative practitioner after the training.
5. A Basic Training should include evaluations of the training and trainer(s) by the participants.

6. Basic Training in the Interdisciplinary Team Model of Collaborative Practice. The interdisciplinary model of Collaborative Practice includes several disciplines as part of the fundamental Collaborative Practice team. In addition to the above:
- 6.1 A training in the interdisciplinary model should have at least one trainer from each of the legal, mental health, and financial planning disciplines.
- 6.2 Participants should be exposed to and educated about:
- How to maximize the knowledge and skills of each team member, both individually and together, in order effectively to work on a matter.
 - The interpersonal and professional aspects unique to interdisciplinary work.
 - The specific boundaries and ethics common to each profession and the unique considerations these pose when working together as a team.
 - The nature of the work performed by each discipline in the general area to which the dispute relates and their roles in the collaborative process.
- 6.3 In addition to the Basic Training described in 1 through 5, above, a Basic Training in the interdisciplinary model of Collaborative Practice shall include at least an additional twelve hours with respect to the items covered in 6.2, above.

What to do When Things Go Wrong

Problem	Possible Solutions
One party won't talk.	<ul style="list-style-type: none"> • Prepare the client to speak ahead of time by explaining the importance of each team member contributing to the discussion and giving him or her time to think about his or her ideas. • Ask why he or she is reticent to speak (is there abuse, intimidation?) • Ask direct questions to the quieter client in the meetings. • Create clear rules for taking turns talking. • When the client is simply unable to speak, the lawyer may speak on behalf of the client until he or she feels ready to do so.
One client verbally attacks the other.	<ul style="list-style-type: none"> • Do nothing. • Help the other client operate from a space of personal calm and centredness. • If the other spouse can deflect, rather than retaliate, it may stop the attacks and may even trigger an apology. • Never admonish either client in the group setting. • The attacking party's lawyer can discuss that person's conduct in private – explain the consequences of ineffective communication.

Problem	Possible Solutions
	<ul style="list-style-type: none"> Consider referring the attacking party to counselling. Take a break from the meeting or take a break from the process to allow emotions to cool. If the attacking party cannot learn to treat the other with respect, consider terminating the process.
Both parties verbally attack each other.	<ul style="list-style-type: none"> Allow the mutual jabs for a period of time to see whether the parties need to vent. If neither party appears hurt by the conduct, consider whether or not this communication style is acceptable to the parties. If the clients are OK with the method of communication, the lawyers can acknowledge that the parties are making mutual jabs at each other and state the lawyers' lack of comfort with this method of communication, but offer to deal with it if the parties wish. This may serve to awaken the clients to an entrenched method of communication that makes others uncomfortable and may not be effective. Ask the parties if this style of communication is what their children are exposed to at home. The lawyers may use their body language to demonstrate their lack of support for this method of communication – sit back, be quiet, withdraw. Ask the parties whether this way of communication is taking them where they want to go, i.e. toward their best negotiated outcome. Remind both parties of the communication protocol to which they agreed and ask whether they still wish to follow that protocol.

Problem	Possible Solutions
One party wants to move quickly but the other wants to go slowly.	<ul style="list-style-type: none"> It is rare that parties move through the psychological stages of divorce at the same time. It is very common for one to be far ahead of the other and to be ready to resolve the issues and move on, while the other is starting at the beginning of the psychological process, struggling to come to grips with the separation. Explain to the parties that this phenomenon is normal. Help the parties understand that it is in their mutual interests that both parties are psychologically ready to make good decisions. It may be necessary to slow the process down to allow the spouse who did not wish the separation to get counselling and process the separation. Only decisions that are absolutely necessary are made while the process is put on hold for awhile until both parties are ready to make decisions. Remind the party who initiated the separation that if the other spouse is pushed too quickly, the divorce process could become high conflict. The litigation route is usually much slower than the collaborative route, even with some pauses. Alternatively, a spouse who is pushed to make decisions too soon, may have <i>buyer's remorse</i> and seek to set aside the agreement in the future.
A client refuses disclosure of information, which the lawyer feels will affect the other person's choices or decisions.	<ul style="list-style-type: none"> Remind the client that he or she and you undertook to make full disclosure of all information that will affect the other person's choices or decisions. Explain that the lawyer has an ethical duty to ensure the fullest disclosure, to ensure the integrity of the CFL process.

Problem	Possible Solutions
	<ul style="list-style-type: none"> • Ask why there is reticence about sharing the information and brainstorm how it might be shared safely. • If the client still refuses to disclose the information, the lawyer must not breach solicitor and client privilege and therefore cannot share the information. • However, advise the client that you will need to terminate or withdraw and reality-check the consequences of that step. • If the client still refuses to disclose, terminate or withdraw in accordance with your local association's protocol.
Poor working relationship between lawyers.	<ul style="list-style-type: none"> • Debrief after each settlement meeting – have lunch, name the problems, and consider solutions. • Get help from other CFL lawyers or mentors. • Hire a mediator to conduct a five-way meeting to facilitate the lawyers' communication and problem solving as well as that of the clients. • Have each lawyer edit letters and progress reports prepared by the other before they are sent to the clients. • If relations cannot be repaired – transfer the file to another CFL lawyer who has a better track record with the other counsel.
One person continues to lobby for his or her position and won't share feelings or concerns.	<ul style="list-style-type: none"> • Remind the party that the goal is to create a customized outcome that integrates each party's subjective reality (wishes, concerns, worries) with the objective reality (available money, financial resources, number of children, value and extent of property). • Reinforce the rules of mutuality: <ul style="list-style-type: none"> • each must be willing to share his or her subjective experience; • each must be willing to hear the subjective experience of the other;

Problem	Possible Solutions
	<ul style="list-style-type: none"> • each must be able to acknowledge his or her own wishes without lobbying for a position or threatening, intimidating, whining, withdrawing, or pouting; • both people brainstorm options that account for both sides' subjective needs and objective reality. • Go back to exploring feelings and interests in individual meetings. • In a private meeting, explore why the client is unwilling to express underlying interests – abuse, intimidation? • If the lawyer can draw out underlying interests in a private meeting, the lawyer can share those on behalf of the client until the client is able to do so.
The parties keep arguing.	<ul style="list-style-type: none"> • The lawyers should model effective communication: • listen before you speak; ask if you can check out what you've heard with the other lawyer or party; • ask if you've missed or don't understand anything; if new information is received, confirm again whether you understand; • listen for something new; ask what new understanding you now have; • focus on what might be desired by all the parties; • invite the other side to do this as well. • The lawyers can model this form of dialogue until the clients can do so. • Name the behaviour and ask the parties if this form of communication is taking them where they wish to go, ie. toward their best negotiated outcome. • Consider referral to individual and/or separation counselling

April 8, 2004

Dear Colleague:

Attached you will find a draft document which represents the work of the Standards Committee of the International Academy of Collaborative Professionals (IACP) with respect to Standards for Collaborative Practitioners. This draft document has been prepared by a committee appointed by the IACP Board, which includes lawyers, mental health and financial professionals from the United States and Canada, who have worked together for nearly a year.

We are asking our IACP members to participate in a review process by reading and commenting upon this draft document and giving us any suggestions you may have. Although there are other documents referenced (General Requirements), the comments or feedback being sought now are solely those for the Minimum Standards for each of the professions. After any further revisions, the Proposed Standards and related documents will be presented to the Board of Directors, together with the Proposed Standards for Trainers (prepared and reviewed in 2003), for adoption in 2004.

We would value your comments. Please email your comments to Paula Jackson, IACP Administrator, at paula@gneo.net, by April 23, 2004, so that we can consider your advice before preparing the final document for IACP Board approval.

Sincerely,

Pauline H. Tesler
Chair, IACP Standards Committee

Practitioners Standards Subcommittee Members:
Janis Pritchard (Chair)
Bob Bordett
Nancy Cameron
Cathy Daigle

International Academy of Collaborative Professionals

Draft Standards for Collaborative Practitioners

IACP Minimum Standards for Collaborative Practitioners

The IACP sets the following basic requirements for a professional to hold herself/himself out as a Practitioner who satisfies IACP Standards for Collaborative Practice.

1. General Requirements

1.1 The Collaborative Practitioner adheres to the:

- IACP Mission Statement
- IACP Goals
- IACP Definition of the Collaborative Law Process
- IACP Statement of Values and Assumptions for Collaborative Practitioners
- IACP Ethical Standards for Collaborative Practitioners

2. IACP Minimum Standards for Collaborative Lawyer Practitioners:

- 2.1 Membership in good standing in the administrative body regulating and governing lawyers in the lawyer's own jurisdiction
- 2.2 At least twelve hours of Initial Collaborative Training to be either:
 - Collaborative Law Training; or
 - Interdisciplinary Collaborative Training for those lawyers holding themselves out as Interdisciplinary Practitioners
- 2.3 In addition to the above, an accumulation or aggregate of thirty further hours of training in any or all of the following areas:
 - Mediation Training (interest-based, narrative or transformative models)
 - Interest-Based Negotiation Training
 - Communication Skills Training
 - Collaborative Training beyond minimum twelve hours of Initial Collaborative Training

3. **IACP Minimum Standards for Collaborative Mental Health Practitioners**

3.1 Mental Health professional license in good standing in one of the following:

- PhD - Doctor of Philosophy
- Psy D - Doctorate of Psychology
- LCSW - Licensed Clinical Social Worker
- RSW - Registered Social Worker
- MFT - Marriage and Family Therapist
- RCC - Registered Clinical Counsellor
- CCC - Canadian Clinical Counsellor
- R Psych - Registered Psychologist
- C Psych - Chartered Psychologist
- Psychiatrist
- LEP - Licensed Educational Psychologist

or equivalent in state, province or country

3.2 Background, education and experience in:

- Family systems theory
- Individual and family life cycle and development
- Assessment of individual and family strengths
- Assessment and challenges of family dynamics in separation and divorce
- Challenges of restructuring families after separation
- For child specialists: expertise in child development, clinical experience with a specialty focus on children and an in-depth understanding of children's unique issues in divorce

3.3 At least twelve hours of Initial Interdisciplinary Collaborative Training

3.4 In addition to the above, an accumulation or aggregate of thirty hours of training in any or all of the following areas:

- Basic Professional Coach Training
- Mediation Training (interest-based, narrative or transformative models)
- Communication Skills Training
- Collaborative Training beyond minimum twelve hours of Initial Collaborative Training

4. IACP Minimum Standards for Collaborative Financial Practitioners

4.1 Professional license or designation in good standing in one of the following:

- CFP® - Certified Financial Planner™
- CPA - Certified Public Accountant
- CA - Chartered Accountant
- CMA - Certified Management Accountant
- CGA - Certified General Accountant
- ChFC - Chartered Financial Consultant

or equivalent in state, province or country

4.2 Background, education and experience in:

- Financial aspects of divorce
- Cash management and spending plans
- Retirement and pension plans
- Income tax
- Investments
- Real Estate
- Insurance
- Property division
- Individual and Family financial planning concepts

4.3 At least twelve hours of Initial Interdisciplinary Collaborative Training

4.4 In addition to the above, an accumulation or aggregate of twenty hours of education in the financial fundamentals of divorce giving the financial professional a basic understanding of family law in his/her own jurisdiction, including:

- Divorce procedures
- Property - valuation and division
- Pensions and retirement plans
- Budgeting - income and expenses
- Child and spousal support
- Future income projections
- Financial implications of different scenarios for settlement

4.5 In addition to the above, an accumulation or aggregate of thirty hours of training in any or all of the following areas:

- Mediation Training (interest-based, narrative or transformative models)
- Communication Skills Training

- Collaborative Training beyond minimum twelve hours of Initial Collaborative Training

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THE ONTARIO COLLABORATIVE LAW FEDERATION

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