

**FACULTY OF LAW
CURRICULUM COMMITTEE**

NEW COURSE PROPOSAL FORMAT

1. Course Description: COLLABORATIVE FAMILY LAW

a. Calendar Description

This course would look at this alternate dispute resolution process starting with an historical perspective, observe its evolution and growth from its start in the early 1990's in the USA and spread throughout Canada and beyond to Europe. The various groups, both locally and across Canada would be examined and then the focus would be on how the process works, the use of an interdisciplinary team who have been specially trained, the training involved, the cost of the process, the benefits and challenges, a critical examination throughout the course of its effectiveness measured and contrasted and compared with mediation, other consensual dispute resolution options and traditional litigation, along with role plays to demonstrate how to effectively deal with the many diverse situations the process can handle. (See detailed course schedule below)

b. Unit/Credit value and class contact hours per week

1.5 units, 3 class contact of 3 hours per week

c. Course materials:

Collaborative Practice: Deepening the Dialogue by Nancy Cameron, published by the Continuing Legal Education Society of British Columbia (\$95 plus HST)

Justice Harvey Brownstone's "*Tug of War: A Judge's Verdict on Separation, Custody Battles, and the Bitter Realities of Family Court*" (Toronto: ECW Press, 2009)

Recommended Text:

Pauline Tessler "*Collaborative Law: What it is and Why Lawyers Need to Know About It*"

d. Evaluation Methods

i. Class Participation: 30 percent

Participation is an important part of the mark and "participation" in this context means grasping, thinking about and synthesizing the ideas and concepts of the course material and then communicating your perspectives with the Instructor and the class.

- Discussion Questions/Comments 10%
- Written Commentaries on Readings/Journals 15%
- Class Participation 5%

ii. Two in-class exams worth 35% each

e. The basic teaching methodology would involve lectures that engage the students in trying to understand how they can integrate the collaborative process into problem solving, not only in the interests of their future clients, but how this facilitates a creative function in the legal process which enhances their own abilities as legal practitioners.

f. Proposed Term to be Offered: Spring or Summer 2012

g. Prerequisite

- Law 322 Family Law
- Recommended: Law 337 Dispute Resolution: Theory and Practice

h. Enrolment limit: 18.

i. Course Rationale

- The Collaborative Family Law process is the new wave of law in resolving disputes without going to Court. The course would involve the learning of a variety of skills, including the knowledge and application of interest based negotiation, an ability to analyze and creatively provide solutions for a multiplicity of life situations that have significant emotional and financial implications for the clients.
- The equity dimensions of the course would include the empowerment of the participants to shape solutions that work best for their family, promoting access to an option that normally costs less financially and emotionally than traditional litigation, utilizing the assistance of trained third parties to ensure that their interests, including any power imbalances are addressed, recognizing the potential for marginalization, specifically arising from inequalities in power and social location that could impact vulnerable parties such as women, people living with disabilities, racialized, etc.
- The students would ,throughout the course , enhance and expand their ability to guide as well as represent the client, be sensitive to the equity issues including those set out above and devise strategies for addressing them, while maintaining the integrity of the Collaborative process.
- The students will learn effective ways of working with a team of multidisciplinary helping professionals and will be able to apply such skills to other areas of law, such as Estate and Personal Injury cases.

j. Accessibility and Accommodation

- This course would be taught either in the morning or afternoon, so as not to unduly affect students with family responsibilities, disabilities or health issues.

k. Instructor/Curriculum Implications

- Robert Klassen is the founder of the Collaborative Family Law Group in Victoria. He has experience in law school teaching, having previously taught Law 322 Family Law at UVIC. As well, he has extensive practice experience in the area. He has been a Family Law Mediator since 1985, is a member of the Family Law and Alternate Dispute Subsections of the Canadian Bar Association and has practiced Family Law exclusively in Victoria for the past 30 years.
- The experience both inside and outside the courtroom gives an opportunity to share knowledge in a practical way that allows comparisons and contrasts of the Collaborative process with the other options available to deal the family disputes.
- Robert Klassen is also an active member of the International Academy of Collaborative Professionals, based in the United States and has access to relevant information to be used in the Course.
- There are 37 lawyers in Victoria who are trained in the Collaborative process and alternate instructors would be available, should circumstances so warrant.

l. Library Implications

- Access to the library would of a selective nature, as the majority of the materials are obtained from other sources.

Syllabus

Introduction

Your Learning Role, Introduction of class members, what is Collaborative Family Law, History of CFL in the United States and Canada, Student Needs Assessment

Paradigm Shift

- Need for the shift?
- Assumptions
- Principles
- Adversarial Lawyering
- Collaborative Lawyering

Collaborative Process Overview

- The first interview with the client would be examined including how the process works, the identifying of the various options available to deal with family matters (handout of sheet in this regard), determining whether the collaborative process is appropriate for this particular client.
- The Collaborative Participation Agreement to be reviewed (hand out of materials in this regard)
- The importance of hearing the client's objectives and concerns is focused on, taking into account the relevant family history and factors such as race, class, gender and ability to manage the emotional and financial aspects of the process

- How to engage the other spouse in the process and what issues, including parenting arrangements, child support, claims for spousal support and division of assets and liabilities could be dealt with using separation, cohabitation or marriage agreements
- Role play first client conference and discussion

The Lawyer/Lawyer Meeting

Issues between counsel in a collaborative context, professional or ethics issues, protocols to be used (the protocols for lawyers and the other team members in the group will be distributed to the students)

Interest Based Negotiation

Principles, particular challenges in the family law context and how it is used in the collaborative process. Mediation and Collaborative law comparisons and contrasts

The First Four-Way Meeting

Client preparation, Lawyer preparation including reviewing the necessary financial or other documentation with the client, having them identify their objectives (goals) and concerns, discussing the review and signing of the CFL Participation Agreement (to be handed out to the students) and having a conversation with the lawyer for the other party to identify issues and establish an agenda for the meeting. How the four-way meeting is conducted, the use of flip charts, break out times, the way forward and the preparation of Minutes of the meeting for circulation to all participants. The use of other members of the team would also be addressed and the use of Coaches prior to the first four way as well as subsequently will be examined. First four way role play and discussion

The Parenting issues in the Collaborative Context (Divorce Coach as guest speaker) Resources in the community are examined in this regard including the use of a Child Specialist, a Family Justice Worker, a Parent Co-ordinator etc

The Substance of Negotiation

Focus on the main issues in the majority of family law matters and how they play out in the collaborative context. How to deal with different communication styles taking into account issues of class, race, culture, gender and religion. How to actively listen to what the participants are saying and reframing when necessary to ensure that each participant is being heard. What learning styles are evident including how the other lawyer addresses areas that are in dispute. Where emotions are high due to anger, resentment or fear, how does the process accommodate these emotions?

Abuse Issues in the Collaborative Context

Impasse- An overview of strategies for impasse- examination of the impasse, classification, forms of intervention, the Collaborative Lawyer/Client Relationship, coping curve, stages of lawyer/client journey, lawyer role for client

Advocacy and “The Law” in a Collaborative Environment

Balancing duty to represent and advocate with process stewardship, the law as a tool and not a weapon, Ethics and Malpractice in the Collaborative process

Preparing the Agreement

Usually a Separation Agreement but could include a Marriage Agreement, Cohabitation Agreement or a Consent Order in a Court Proceeding started prior to the CFL process but which proceeding is to proceed on an undefended basis. Examination of a standard Separation Agreement will occur with the focus on how the CFL process is specifically referred to in the documentation

Criticism of the Collaborative Model

Examination of its strengths and weaknesses, a review of what we have learned, what challenges remain, what new understandings remain elusive, where can collaborative practice go? Application of Collaborative Practice in a non Family Law matter