

COLLABORATIVE LAW:
A BETTER WAY TO
SETTLE YOUR FAMILY
LAW MATTER

Collaborative Law

Collaborative Practice
Canberra

Canberra Collaborative Family Lawyers

What is Collaborative Law?

A collaborative process is a process, in which you and your spouse, with the support of your lawyers, identify interests and issues, develop options, consider alternatives and make decisions about future actions and outcomes.

The main elements of the process are:

- Commitment to negotiation and agreement (even if it gets tough!)
- Identification of interests
- Development of options
- An outcome based on the future requirements of the parties

Collaborative law is a process of resolving family disputes including disputes about property and asset division, care arrangements for the children and maintenance or child support arrangements without going to court. Solutions can be innovative and tax effective for both parties.

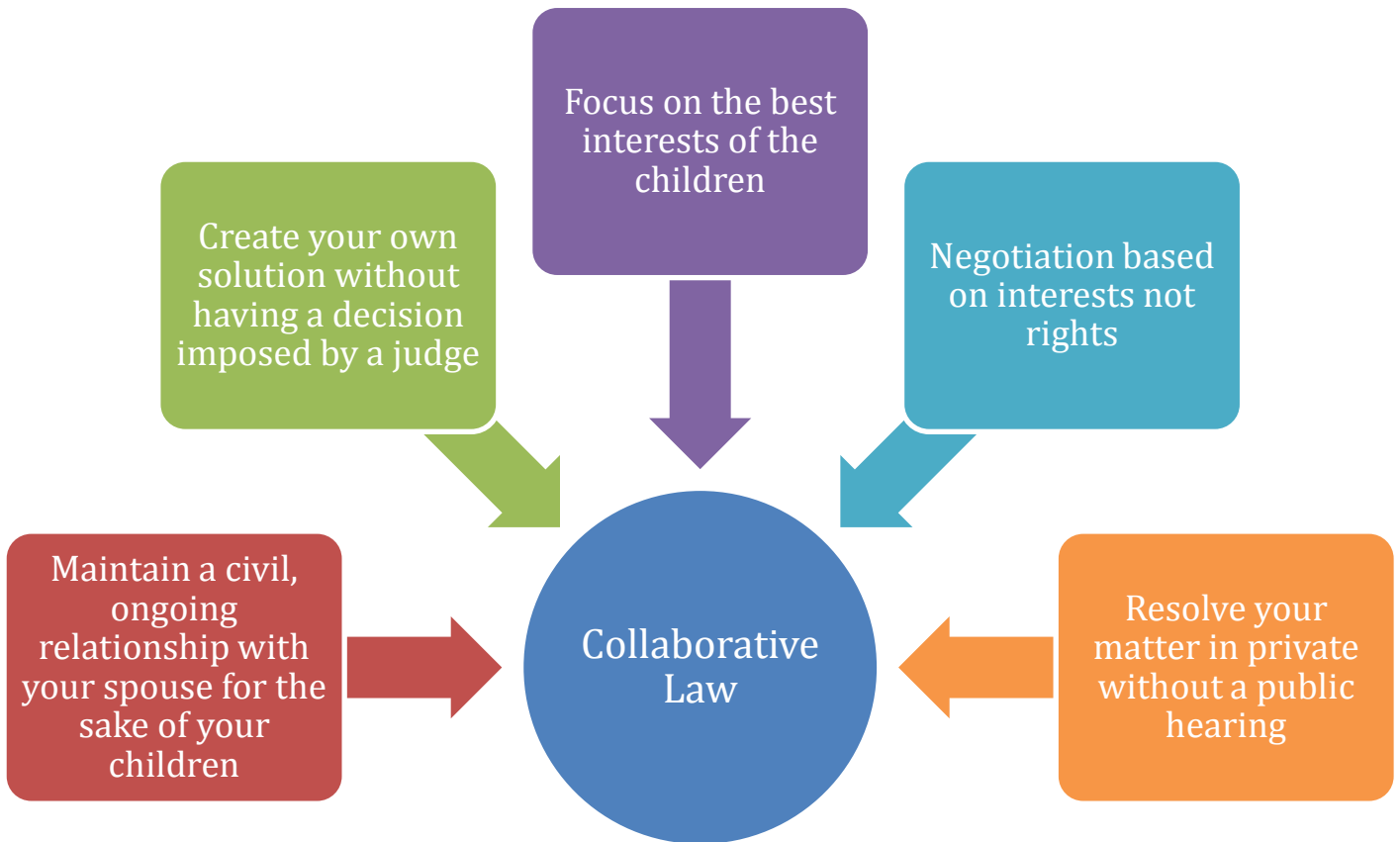
The collaborative process involves you and your spouse agreeing not to go to court to negotiate freely with their best interests in mind rather than in an environment of fear. Keep in mind that your lawyer and their firm cannot represent you if you proceed to litigation.

'Each participant, whether lawyer or client, bears personal responsibility from the start for generating creative alternatives that might meet the legitimate needs of both parties' - experienced collaborative lawyer.

Your lawyer will assist you to focus on your interests and in some cases, some of these may be similar to your spouse. As a **team** you will gather all the information relevant to the dispute, this may include:

- Financial information such as tax returns, bank statements, information about investments or shares, copy of title of the house, value of vehicles and other assets;
- Details of any loans and liabilities;
- Information regarding the children including details about special expenses that may be relevant to your child/ren;
- Details of how your child/ren is coping and their views.

Is Collaborative Law Right For Me?



At the first meeting, your lawyer will discuss whether the process is right for you. Your lawyer will inform you about the collaborative process and discuss what you are hoping to achieve. This stage will involve discussion of a number of options for resolving your dispute and allow you to make an informed choice about your matter.

Collaborative law is a dispute resolution process, which can be tailored to your individual needs, this may involve:

- The engagement of other professionals;
- The use of video-conferencing;
- The use of an interpreter where language or culture is an issue.

How is Collaborative Law Different?

Interest based negotiation: you identify your interests and negotiate on that basis, rather than 'rights' or 'entitlements'.

Agreement not to go to court: both you and your spouse agree to solve the dispute outside of the court.

Creative results: collaborative lawyers are not focused on 'percentage of care' or fifty-fifty splits. We understand that every situation is unique and requires a unique solution.

Disclosure of information: the process requires both parties to disclose any relevant information; if a party withholds or misrepresents information the process may be terminated. This is to ensure that information is not 'kept in the back pocket'.

Legal Advice: any advice given by your lawyer will be open and compliment the process. Collaborative lawyers generally do not give advice before the first 4-way meeting to ensure the most accurate advice is given.



What is the Process?

Stage 1

- **Commitment**- at the initial stage of the process, parties must indicate their commitment to collaborating outside of the court system. This is done by signing a binding contract agreeing not to litigate and if litigation commences, the lawyers cannot act for the parties.

Stage 2

- **Issues**- identify the relevant issues to be discussed and resolved
- **Priorities**- this involves identifying each parties interests, hopes, needs along with any concerns or fears for now and into the future

Stage 3

- **Involvement of other professionals**- if parties agree it would be helpful, other professionals may be involved to assist with the process
- **Information gathering**- this stage requires both parties to provide all relevant information in order for the negotiations to commence

Stage 4

- **Options**- this stage involves both parties generating options to solve the issues, all options will be discussed and parties should refrain from making decisions without considering creative solutions
- **Acceptance of options**- both parties decide on options that are suitable and acceptable for each of them

Stage 5

- **Preparation of agreement**- this is the final stage the agreement will be drafted with input from both lawyers. It will to be signed by you and your spouse.

Who Can Be Involved?

The process will involve yourself and your spouse; each of you will have an appropriately trained lawyer and will work together to resolve the dispute.

Other collaboratively trained professionals may also be involved to assist you to identify the best interests of the children and assist with any emotional, cultural or knowledge issues. To achieve this, the process may involve:

- Accountants or financial advisors
- Psychologists
- Real estate agents
- Other collaboratively trained professionals.

How Much Will it Cost? How Long Will it Take?

We understand that you and your spouse never budgeted on separating and as a result the collaborative process can be achieved within any means. The collaborative process may cost significantly less than going to court. The cost of using other professionals is shared between the parties, meetings are held jointly and the client has control of what is discussed.

During the initial stage, your lawyer will discuss all relevant fees with you and also discuss how and when such fees will be payable.

The length of the process will depend on the issues in dispute, but many matters resolve in 3 – 5 meetings.



Collaborate or Litigate?

| | Collaborative Law | Court |
|-------------------------------|--|--|
| Role of Lawyers | Each party has a lawyer present to help negotiate and give legal advice through four way meetings. Lawyers are members of a 'team' | Present evidence, examine and cross examine witness, argue |
| Measure of success | Solution is acceptable to both parties | Both clients are trying to win |
| Final decision made by | Clients | Judge |
| Estimated time | 2-8 months. Most collaborative processes take between 3 and 6 meeting to reach final agreement. | 1-2 years, sometimes longer |



What if...

We don't reach an agreement?

If you decide to terminate the collaborative process and proceed to court there are a few essential things to know:

- If you decide to proceed to litigation **your lawyer and their firm will not be able to represent you;**
- You will need to engage another legal representative.

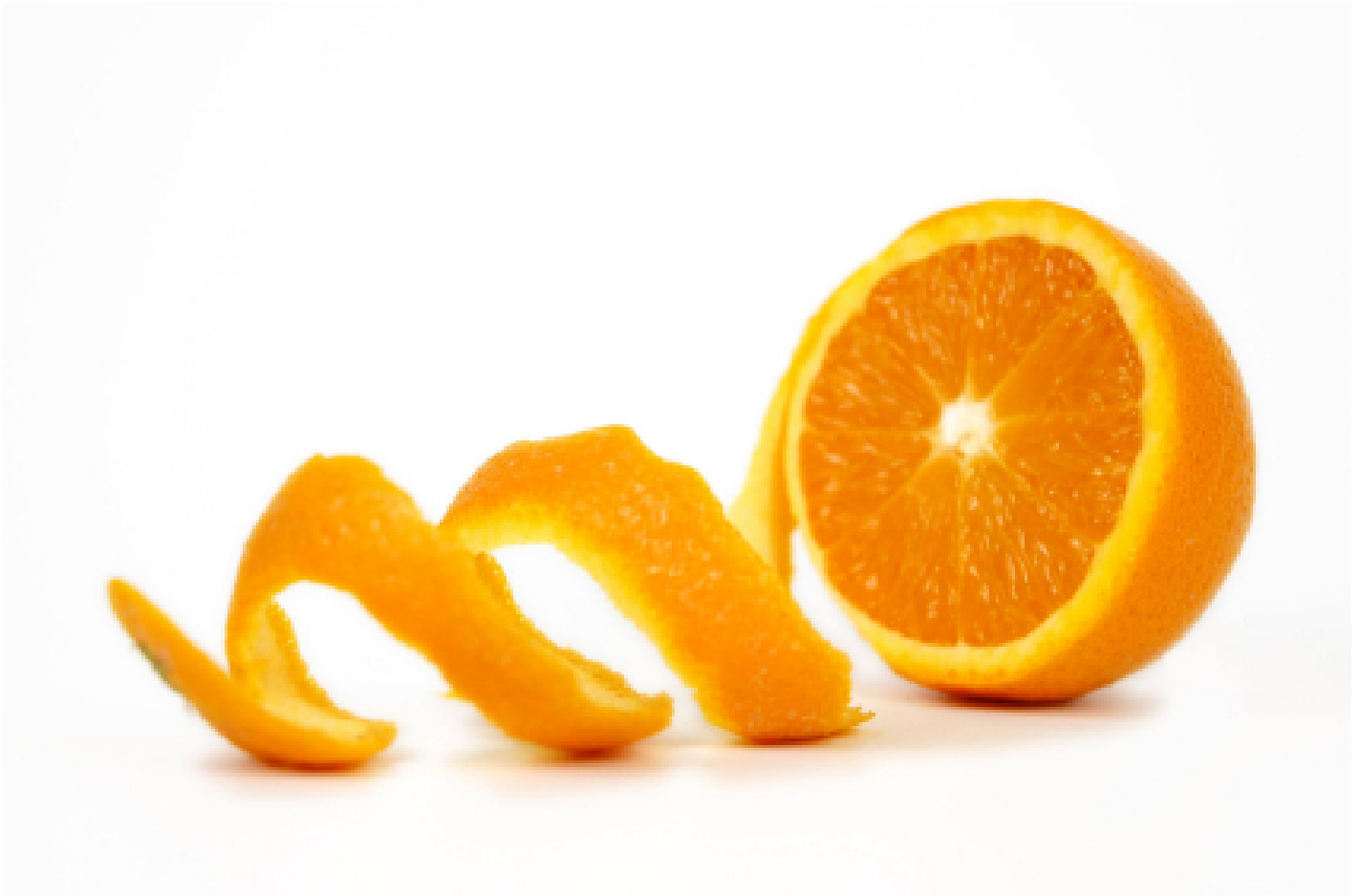
I don't trust my spouse?

We have trouble communicating?

I don't think my spouse will disclose everything?

- If you answered 'yes' to any of the above questions, this may present some challenges, but will not necessarily preclude you from participating in the collaborative process.
- At the initial stage, a varied process may be negotiated, which would allow for both parties to feel safe and empowered during the process. This may involve the use of video-conferencing or other personal protection measures.
- In addition, it may also be appropriate to consider an approach involving other professionals where emotional, communication or relationship issues would effect a client's participation in the process.

Why a Separation is Like Dividing an Orange...



It's about understanding 'why' a person wants something not just 'what they want' or what they are 'entitled to'.

For example:

Two celebrity chefs are in a television cook-off. Let's call them Gary and Kylie. Gary decides to make Orange Sorbet. Kylie decides to make a tuna steaks with orange zest salsa. Problem: there's only one orange.

Gary takes this very seriously and calls his lawyer. In retaliation Kylie calls her lawyer. The lawyers write to each other arguing about who is entitled to the orange. After a lengthy Court battle the Judge orders that the orange be cut in half. Both end up with 50% but neither of them have enough to make their dish tasty.

If Gary and Kylie sat down to understand their interests, they would realise that Gary really only needs the juice for his recipe, and Kylie needs only the rind. If they had reached an agreement based on their interests, they would have both got what they needed.

Of course, not every case is that easy – but by focusing on understanding interests means your lawyer can tailor solutions that work for both parties, not just solutions that make each person equally unhappy.

This is the aim of Collaborative Law.

More About Canberra Collaborative Family Lawyers

Not all lawyers advocate Collaborative Law to their clients. A group of local family law specialists are seeking to change that.

Canberra Collaborative Family Lawyers is a group that brings together Canberra's leading Family Law Firms to assist families to keep away from Court.

The traditional role of the lawyer is to put on the boxing gloves and fight it out in the court, leaving the ultimate decision to the judge. Canberra Collaborative Family Lawyers encourage clients to choose Collaborative Law so that we can take the gloves off and work as a team to achieve a settlement that is controlled by the parties.

Canberra Collaborative Family Lawyers was established as a response to many lawyers shying away from Collaborative Law, choosing Court over Collaboration.

The collaboration between firms Farrar Gesini Dunn, Phelps Reid, Alliance Family Law, Capon & Hubert, Elringtons and Certus Law means that Canberra has a growing number of matters settling via Collaborative Law and avoiding the cost, delay and pain of litigation. The group aims to build trusting relationships between the lawyers across different firms so that the focus is on reaching agreement.

All of the members of Canberra Collaborative Family Lawyers offer a 20-minute free telephone appointment to discuss the merits of Collaboration.

Farrar Gesini Dunn

<http://www.fgd.com.au>

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Phelps Reid Lawyers

<http://www.phelpsreid.com.au/index.asp?IntCatId=8>

t: (02) 6248 8477

Alliance Family Law

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Capon & Hubert Lawyers and Mediators

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t: (02) 6286 1977

Elringtons Lawyers

<http://elringtons.com.au>

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Certus Law

<http://www.certuslaw.com.au>

t: (02) 6268 9090

Where Can I Get More Information?

For more information on Collaborative Law in Canberra, visit our website at <http://collaborativepracticecanberra.com.au>.

Or visit us on Facebook at <https://www.facebook.com/CanberraCollaborativeFamilyLawyers>.

For more information on Collaborative Law in Australia generally, visit <http://www.collaborativelaw.asn.au>.

Alternatively, you can contact a member of the Collaborative Practice Group and discuss the process during a free 20-minute telephone appointment.

