

COLLABORATIVE PRACTICE Toronto

OCLEF 2002 Panel Discussion

The Ontario Collaborative Law Federation sponsored a two day conference on Friday, September 27 & Saturday, September 28, 2002.

Collaborative family law lawyers from across Ontario and New York gathered in St. Catharines Ontario for the largest Ontario-sponsored Collaborative conference to date. Our collaborative trainers were lawyers Pauline Tesler and Chip Rose from California, highly respected in both the U.S. and Canada. This "sold-out" conference gave collaborative lawyers the opportunity to add to their basic skills and training.

[Click here to read about some of the highlights from the conference](#)

The Friday evening panel discussion was recorded and can be heard with a RealAudio Player. [Click here to download a copy of the free RealAudio Player](#) if you do not have one installed.

The Panel was moderated by:



James C. MacDonald, Q.C.

Jim is the President and one of the founding members of The Collaborative Family Law Association Ontario - Toronto Group.

He is a Family Law Specialist and the principal partner at <http://www.macdonaldpartners.com> in Toronto, Ontario.

The panelists were:



David Carter

David is a member of the Association of Collaborative Family Lawyers (Medicine Hat). He provides provides training in Collaborative Family Law through Palliser Conflict Resolution. He is a partner at **Sihvon Carter Fisher & Berger** in Medicine Hat, Alberta.



Chip Rose

Chip is a certified specialist in Family Law in California and Co-Director of the **Mediation Center in Santa Cruz**, California. He is a divorce mediator, trainer and law advocate in the dispute resolution field.



Pauline H. Tesler

Pauline is a certified specialist in Family Law in California. She is a pioneer in developing and extending the practise of Collaborative Law in California, across the United States and in Canada. She is a partner at **Tesler, Sandmann & Fishman**

[Click here to begin listening to the panel discussion.](#)

It lasts about 64 minutes

The questions being discussed by the panelists are:

1. How do you handle a case when your client wishes to proceed collaboratively and a non Collaborative Family Law lawyer is on the other side?
2. What materials do you give to clients before or at the first four way meeting to prepare the client for the collaborative process?
3. In Ontario, the Financial Statement prescribed by our courts, has become a tool in negotiations. In the Collaborative process, do you require the clients to complete this form, either sworn or un-sworn, as part of the exchange of financial information. Or, do you let the clients, in the four way meetings, define the disclosures that should be made?
4. How can the transparency of the process be maintained when the lawyers meet privately? Is there a danger that collaboration becomes collusion?
5. Do you help your client prepare for the negotiations?
Do you give your client negotiation advice between meetings?
6. Can any information that might affect the outcome, legitimately be kept secret. For example: the husband should not offer lump sum support if he knew his wife was about to remarry.
What is the duty of the wife's lawyer who knows this information?
7. If the client told you not to disclose certain information, what would you do?
8. We have been talking about working with the Collaborative process and working with the outcome.
Would the panelists comment on the statement: Lawyers control the process and clients control the outcome.
9. Is the Collaborative process appropriate for the negotiation of marriage contracts?
10. We have been talking about how to give legal advice without taking away a client's right to make decisions based on interest and values. Do the panelists have any suggestions on how to deal with this problem?
11. If a client, fully informed, "gives up" their legal entitlement for instance: entitlement to spousal support, do lawyers have any further obligation?

12. What do you do when your client, perhaps motivated by guilt, is giving away the candy store at a four way meeting?
13. Once the value of an item has been established, isn't the "toothpaste out of the tube"? If the collaborative process breaks down, the parties have this information to give to new experts and new lawyers.
14. What is the experience in Medicine Hat with respect to the number of collaborative law versus litigation cases and what is the rate of success? Are statistics available?
15. Could the panel make comments or recommendations on the issue of exclusiveness versus inclusiveness of membership in Collaborative Family Law organizations?
Don't CFL groups need to be inclusive in order for Collaborative Family Law to develop in mainstream law?

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