

Whistle while you work

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By Noel da Silva

Happy Days. Just like Fonzie, Richie and the rest of the Cunningham family on the 70's sitcom Happy Days, it is great to go to work with a smile on your face, accomplish what your client wants and get paid to do it. This happened recently in a file in which an engaged couple wanted a Cohabitation Agreement that would become a Marriage Contract when they marry. Lawyers are often leery about doing this type of domestic contract as so many have been set aside by the courts. They are problematic because they can also be the source of a Law Society complaint.

After the initial approach from the client we decided to use the Collaborative Law method to negotiate the terms of the agreement. I only open a collaborative file if there is a properly trained lawyer representing the other party. Here I was fortunate to have such a person who was a very cordial, smart, detail oriented lawyer who is a member of Collaborative Practice Toronto.

During the first meeting with the client the financial disclosure aspect of the negotiations were discussed among many other subjects and issues. By the time our first collaborative meeting took place I was able to present a draft Financial Statement of the client to the other side along with a disclosure

brief of the client's assets, liabilities, income and tax returns.

Prior to the meeting a telephone call took place to discuss the agenda and what we wanted to accomplish for our clients. The open, respectful discussion was very helpful to make the first meeting efficient and to the point. The clients appreciated that. We were not wasting their money. The other lawyer also arrived at the first meeting with her client's Financial Statement and disclosure documents.

Even though lawyers in the collaborative law/practice process maintain their roles as advocates, the clients were encouraged to speak and express their goals and everything they wanted to achieve with the agreement. We discussed their instructions, assets structure and how future acquired assets were to be dealt with. It is vital to have full participation from the clients. After all, it is their life and their agreement.

We set the date for the next meeting, assigned homework to the lawyers and parties. Then a debriefing session of a few minutes was held with each client and then with the lawyers only. The purpose was to see what we could do better next time, iron out any misconceptions and discuss any other concerns.

At the next meeting in Toronto, which was less than an hour in length, all remaining issues were ironed out. The sample property division calculation was explained and amended for clarification. The other lawyer generously took on the drafting task. I have revised that draft after a review. Once each client reviews it and signs, the deal will be done.

If you saw and heard a person in the car next to you, whistling on his way to and from work, it was me. It is terrific to practice law this way. The simple secrets for a takeaway were signing a participation agreement not to go to court, full disclosure, open, respectful dialogue and good faith negotiations. It is so refreshing!

Noel is a Brampton Family Lawyer and Mediator trained in the Collaborative Process. He is a member of Peel/Halton Collaborative Practice, Collaborative Practice Toronto, Ontario Collaborative Practice Federation and the International Association of Collaborative Professionals.

Disclaimer: This article is only intended for information purposes and is not intended to be construed as legal advice.

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