

Family Mediation/Arbitration

What is Family Mediation/Arbitration?

Mediation/Arbitration is an alternative dispute resolution service for high conflict parents seeking to resolve custody and access issues following separation or divorce. The Mediator/Arbitrator is usually a mental health professional, lawyer or mediator who has experience and knowledge of separation and divorce, high conflict families, child development, parenting time schedules, family systems, family violence, conflict resolution, arbitration and the relevant legislation and family law rules. Parents entering into a Mediation/Arbitration process do so voluntarily and must obtain independent legal advice (ILA) prior to consenting to the process.

What do Mediators/Arbitrators do?

The Mediator/Arbitrator fulfills two roles. Initially in a mediation role the Mediator/Arbitrator will attempt to facilitate a consensual resolution between the parents of any issues relating to custody and access of the children. In an arbitration role the Mediator/Arbitrator will make binding decisions on any issues the parties have been unable to resolve. Although mediation and arbitration are usually separate processes, done by separate professionals, in a Family Mediation/Arbitration the process is combined allowing the same professional to mediate or, in the event of an impasse, arbitrate the same issue. The arbitration process is governed by the *Arbitration Act, S.O., 1991*, and any amendments and its also governed by other relevant legislation.

The Mediator/Arbitrator works with the family until they have been successful in developing a Parenting Plan that best meets the needs of their children and family. A Parenting Plan is a document that pertains to all matters relating to custody and access such as how each parent is to spend time with the children and how major decisions (religion, education, medical and extra-curricular activities) will be made. A well structured Parenting Plan reduces conflict between the parents by stipulating all parenting arrangements including the usual residential schedule, summer schedule, and holiday schedule, communication, homework, childcare, residential moves, schedule changes, travel, etc. When entering into a Mediation/Arbitration process, the parents are waiving

their right to further litigate these issues in court. Any arbitrated decisions are subject to the rights of appeal set out in the legislation.

What types of situations are best suited for Mediation/Arbitration?

Parents may wish to consider Mediation/Arbitration when they are seeking an efficient and cost effective process in which they effectively separate parenting responsibilities. Since Mediation/Arbitration is a private process there is usually less delay than in a court proceeding. This allows parents to have a speedy resolution of the parenting issues without the cost that accompanies a drawn out court battle. Parents may choose the Mediator/Arbitrator and unlike a court proceeding where several different judges may hear your case, the Mediator/Arbitrator remains on the case, often accomplishing much more in less time. It is well documented that children will best manage a separation or divorce when conflict is kept to a minimum and they have regular and predictable access to both parents. Mediation/Arbitration fulfills this objective in an efficient manner.

Mediation/Arbitration is also desirable as it is a confidential process; unlike a court proceeding that becomes a matter of public record. As the proceedings are less formalized than a court process and the Mediator/Arbitrator remains the same throughout, parents may find it much less stressful and more personable. Parents may seek a Mediator/Arbitrator specifically because of their knowledge and experience with high conflict families and where assistance is needed to tailor make a Parenting Plan that attempts to resolve situations in keeping with the best interests of the children. When parents choose to work with a Mediator/Arbitrator who is a mental health professional, the Mediator/Arbitrator may involve a lawyer from time to time to assist in the resolution of issues of law or procedural issues. Mediation/Arbitration may be beneficial where parents have concerns about drugs, alcohol, child abuse, and/or the stability of the other parent. It may also be useful to parents who have separated but are living temporarily in the same home or who have concerns about the arrangements for a child with special needs.

What is involved in the referral and intake process?

The Mediator/Arbitrator will initially conduct an appropriate screening of the parties to determine their suitability for the process. A brief telephone conference will be held with the parties' counsel to gather information regarding the history of the dispute, determine the mandate of the process and review the Mediation/Arbitration Agreement (the "Agreement"). The parents must review the Agreement with their lawyers and provide a certificate of independent legal advice along with the signed Agreement. The parents attend either together or separately for an information meeting with the Mediator/Arbitrator during which the Agreement and process is reviewed and questions are asked. A retainer is provided in advance of this preliminary work.

Mediation/Arbitration is often confused with Parenting Coordination (PC). PC assists parents to monitor and implement the Parenting Plan that is already in place. Mediation/Arbitration is unlimited (potentially) in the scope of its mandate, which is determined by the parents and their counsel at the onset of the process. The mandate of PC excludes legal custody, relocation and/or parenting time schedules, other than changes of a minor and temporary nature. Parents may enter into a Mediation/Arbitration process to develop the Parenting Plan and move into PC to monitor and implement the plan.

What happens during the Mediation/Arbitration process?

The mediation and arbitration are completely separate. In mediation the Mediator/Arbitrator will have full access to any reports and documentation that may be relevant, as well as to any other professionals, who have been and/or continue to be involved with the family. During the mediation, the Mediator/Arbitrator may meet with the parents together or individually in an attempt to facilitate an agreement and develop a Parenting Plan. The parties may agree they have reached an impasse and request the issue be arbitrated, however, the Mediator/Arbitrator retains the authority to decide when mediation ends and arbitration begins. It is the responsibility of the Mediator/Arbitrator to advise the parties in writing that an arbitration process has been initiated, as well as the time and place of the arbitration.

The arbitration is governed by the Arbitration Act and the relevant legislation and involves a specific procedure as outlined in the Mediation/Arbitration Agreement that facilitates each of the parties making submissions and the opportunity for the parties to respond to the other party's submissions. During the arbitration, there is full transparency. In other words, unlike mediation, the parties will not meet with the arbitrator individually and all information disclosed to the arbitrator will be provided to the other party. The Mediator/Arbitrator will be relying on the evidence of the parties and other relevant professionals such as doctors, teacher or therapists, etc. Decisions made by the Mediator/Arbitrator are binding and can be appealed. The Mediator/Arbitrator will render a written award and provide a copy to each party.

Fees for Mediation/Arbitration are divided in accordance with the Agreement and a retainer is provided to the Mediator/Arbitrator at the outset.