

ARBITRATING YOUR FAMILY LAW ISSUES - IS ARBITRATION FOR YOU?

Arbitration proceedings in the family law context have been around for a long, long time. Here in Ottawa, they experienced a surge in popularity about 10 years ago when parties began to be faced with significant delays in getting their family law proceedings through the Court system. Delays of 18+ months to get a trial date and the escalating costs of family litigation motivated people to opt out of the Court system and to choose to have their family law disputes resolved in a private arbitration forum. Regrettably, those delays and costs continue to be part of the Family Court process today, and accordingly, arbitration is considered by many to be a preferable dispute resolution process to adopt.

Many people confuse arbitration with mediation and it is important to recognize that the two processes, although both forms of alternate dispute resolution, are very different. In mediation, the mediator is a negotiation facilitator who attempts to bring the parties to a negotiated settlement, but has no decision making authority. In arbitration, the arbitrator is appointed to review the case and to make a decision on the issues in dispute. There is therefore finality and closure when arbitration is adopted whereas with mediation, there is no guarantee that a resolution will be achieved.

So WHY CHOOSE ARBITRATION?

Informality: A lot of people feel more comfortable dealing with their case in a setting that is less formal and by consequence, less intimidating. Although arbitration hearings still generally apply the standard rules of evidence and there are still rules of procedure to be followed, there is far less of an intimidation factor in the comfort and privacy of an arbitration hearing.

Timeliness of the Process: The arbitration process tends to run its course much faster than the Court process. Whereas a Court proceeding involves the serving and filing of pleadings and a number of Court attendances for a Case Conference, Settlement Conference and/or motion, with a trial date for a final hearing often many months down the

road, an arbitration can be a far more streamlined, time-efficient process.

Costs: Arbitrations are generally a far less expensive process than Court proceedings. Although the parties have to pay for the arbitrator's time, and sometimes the rental of a room for the purposes of holding the hearing, the overall cost outlay tends to be significantly less for a well-managed, well-conducted arbitration proceeding.

Privacy: Another real benefit to an arbitration proceeding is that the conduct of the proceeding is private and confidential. Whereas the documents on the Court file are of public record and anyone can attend to sit in the courtroom and listen to a motion or trial (other than a child welfare proceeding), arbitration hearings are private and confidential.

Choice of Arbitrator: In arbitration, the parties are able to select the arbitrator who is most qualified to determine their issues in dispute. By having the ability to select the arbitrator, the parties can have the confidence that the person determining their issues has the most appropriate training, background and expertise to do so. Effectively, the parties can do something which they cannot do within the Court system, namely "judge shop".

Carol Cochrane of our firm is an accredited, experienced family law arbitrator and the Co-Chair of the *Ottawa Association of Family Law Arbitrators*. If you want to learn more about the arbitration process or you are interested in retaining Carol's services to act as your arbitrator, feel free to contact her at ccochrane@lmrlawyers.com.