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Education for Women
Women's Right to Know

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droit de la famille
Le droit de la femme à savoir

Conflict, Court or Another Way? Different Ways of Resolving a Family Dispute

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1

Presenters

Tamar Witelson

Legal Director, METRAC

Tamar Witelson is the Legal Director at METRAC. Her background includes practice in labour and human rights law, and in Constitutional law for the Ontario Ministry of the Attorney General. She was also counsel at the Human Rights Tribunal of Ontario, and before joining METRAC was staff lawyer at the Women's Legal Education and Action Fund (LEAF), running an equality rights law and information website.

Victoria Starr

Family Lawyer/Mediator/Arbitrator,
Starr Family Law, Toronto

Victoria Starr of Starr Family Law has practiced exclusively in family and child protection law for more than 15 years. She represents clients in court and in various alternate dispute resolution processes, with expertise in domestic violence and sexual abuse. She is also a trained mediator, arbitration and collaborative family law lawyer.

METRAC

METRAC, the **Metropolitan Action Committee on Violence Against Women and Children**

- works to end violence against women, youth and children
- a not-for-profit, community-based organization

www.metrac.org

METRAC's **Community Justice Program**

- provides accessible legal information and education for women and service providers
- focuses on law that affects women, from diverse backgrounds, especially those experiencing violence or abuse

FLEW, **Family Law Education for Women** in Ontario

- provides information on women's rights and options under Ontario family law
- in 14 languages, accessible formats, online and in print

www.onefamilylaw.ca
<http://undroitdefamille.ca/>

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Topics to be Covered

1. What is Different about Alternate Dispute Resolution (ADR)?
2. Types of ADR
 - a. Negotiation
 - b. Mediation
 - c. Arbitration
 - d. Parent Coordinators
 - e. Collaborative Law
3. ADR and Abuse
4. Screening for Domestic Violence
5. The “Need to Know” Basics
6. Additional Resources

Accurate as of the date of this webinar presentation: November 22, 2012



What is Different about ADR?

What is Different about ADR?

Alternate Dispute Resolution (ADR)

- A method to resolve a dispute other than Court

- Used in many areas:
 - Employment problems
 - Business disagreements
 - Contract disputes
 - Family arrangements



What is Different about ADR?

Resolving a Family Dispute in Court

- One side initiates action; the other defends
- Often takes a long time
- Usually best to have a lawyer
- Costly
- Formal Rules
- Judge's understanding of family issues varies
- Little control over outcome
- Not confidential
- Outcome is a "Court Order"

What is Different about ADR?

Alternate Dispute Resolution vs. Court

- Voluntary
- Can be less formal
- Parties choose the third party who assists and/or decides
- Third party usually an expert in family issues
- Usually moves more quickly than Court
- Sometimes possible without lawyers
- Can be less costly

What is Different about ADR?

Alternate Dispute Resolution vs. Court

- More control over process
- Can be more private
- Results can be more tailored to the parties' concerns
- Most effective when both sides have comparable bargaining power





Types of ADR

Types of ADR

1. Negotiation

- First step of every ADR process
- Very informal
- Discuss differences to work out solutions
- With or without a lawyer
- Can walk away at any time
- Successful outcome is a “Domestic Contract”

Types of ADR

2. Mediation

- Negotiation with the assistance of a mediator
- With or without lawyers
- The mediator
 - is chosen by the parties
 - is a neutral professional
 - can make suggestions
 - cannot give legal advice
 - cannot force a decision or solution
- Goal is to meet the interests of both parties as much as possible
- Can walk away at any time
- Outcome is a “Memorandum of Understanding” (MOU)
- Can become a “Domestic Contract” if parties agree

Types of ADR

2. Mediation

- Can be:
 - Independent of Court
 - Before Court
 - At Court

- Ontario government-funded mediation
 - Free mediators at courthouses
 - Available to everyone
 - Free Legal Aid mediators
 - Available if at least one party eligible for Legal Aid
 - At courthouses and Legal Aid Offices
 - Private government-subsidized mediators
 - Up to 6 hours
 - At courthouse or off-site
 - Low cost, income-based

Types of ADR

2. Mediation

- **No mandatory family mediation**

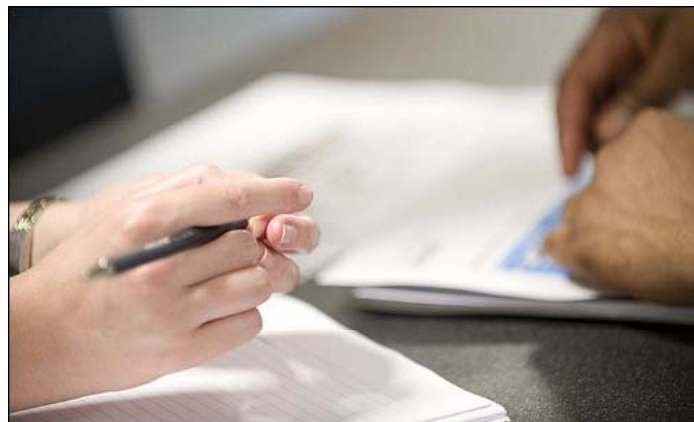
- **Level of privacy:**
 - a) **Closed**
 - Confidential unless child safety issue arises
 - Discussions cannot be raised in Court

 - b) **Open**
 - Not confidential
 - Discussions can be raised in Court

Types of ADR

2. Mediation

- Ask questions about the process
- Starts with a Mediation Agreement
- Consider written rules for mediation if a power imbalance between parties
- Consider talking to a lawyer
 - Before starting
 - Before signing a Domestic Contract



Types of ADR

Every Domestic Contract

- To be valid and enforceable:
 - Must be signed by both parties
 - Must be dated
 - Must be witnessed by another person
 - Each party gets independent advice from a lawyer
 - Each party makes full financial disclosure for money matters

Types of ADR

3. Arbitration

- Parties choose the arbitrator
- Voluntary until agreement to arbitrate is signed
- Once arbitration begins, can't walk away
- Arbitrator makes a binding decision
- Arbitrators must apply Ontario and/or Canadian law
- Outcome is an "Arbitration Award"

Types of ADR

3. Arbitration

- Formal process, but can be more flexible than Court
- Parties must get legal advice about arbitration
- Parties may have legal representation during arbitration
- Parties must be screened for power imbalance and domestic violence before arbitration
- Arbitration decisions dealing with a child must be decided according to the best interests of the child

Types of ADR

3. Arbitration

- Arbitration process and decisions can be challenged in Court if, for example:
 - the law was misapplied
 - the facts are incorrect or misunderstood
 - one party did not really consent
 - the terms are unconscionable
 - the arbitrator was biased

- Arbitration agreements can restrict the right to challenge a decision, but not for mistakes in law

Types of ADR

3. Arbitration

- Faith-based arbitration
 - Assistance from a religious official to resolve a family dispute
 - Voluntary
 - Decisions based on religious principles that do not follow Canadian law are not legally valid or enforceable in Court

Types of ADR

4. Parent Coordinators

- Voluntary until a Parent Coordinator Agreement is signed
- For after a parenting plan is in place
- Useful for parents who can't get along
- Coordinator is trained in:
 - Child and family issues
 - High conflict family situations
 - Conflict resolution
 - Family law
- Coordinator acts to:
 - Coach parenting skills
 - Enforce parenting plan
 - Arbitrate disputes with some legal decision-making power

Types of ADR

4. Parent Coordinators

- Parents must participate in parent coordination for the full term of the agreement, unless both parents agree to stop
- Rules for Arbitration apply
- Outcome is an “Arbitration Award”



Types of ADR

5. Collaborative Law

- Formalized negotiation process
- Both parties are represented by lawyers
- Lawyers are “communication coaches” and legal advisors
- A 4-way “problem solving team”
- Based on cooperation
- Parties agree not to go to Court while negotiating a settlement
- Lawyers cannot also represent the parties in Court
- Can be costly

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ADR and Abuse

ADR and Abuse

- **Abuse in a partner relationship can be:**

- Physical
- Sexual
- Verbal
- Psychological
- Emotional
- Financial
- Spiritual



- **Abuse can be bullying, or any behaviour that demeans, or removes a person's confidence or ability to act as she chooses**

ADR and Abuse

- Most types of ADR are not appropriate if there is or has been abuse in a relationship
- Victims may be embarrassed or afraid to admit the abuse
- Abusers may be unaware of or unwilling to acknowledge the abuse
- Abuse creates an imbalance in power
- Victims may feel forced into agreement
- If abuse is not recognized, an ADR process may add to the abuse and result in unfairness



Screening for Domestic Violence

Screening for Domestic Violence

- Women in abusive, coercive or controlling relationships are at an increased risk of violence at the time of separation
- Screening “tools” can help predict if a woman or child is at risk of harm post-separation
- In Ontario, Arbitrators and Parent Coordinators are required to screen for domestic violence
- Screening for domestic violence is a common best practice in mediation

Screening for Domestic Violence

The screening process:

- Screeners are trained and certified
- Often done by the same person for both parties
- Is usually confidential
- Looks for signs of a person's vulnerabilities
- Considers:
 - Mental or physical illness
 - Drug or alcohol dependency
 - Intense anger or blame
 - Confrontational behaviour
 - History of domestic violence
- May conclude how to fairly balance a mediation or arbitration
- May conclude that a mediation or arbitration should not proceed



The “Need to Know” Basics

The “Need to Know” Basics

1. How do I find an ADR specialist?

- Ask around – your friends, therapist, counsellor, lawyer, community agencies
- Check referral services and professional organizations



The “Need to Know” Basics

2. How do I choose an ADR specialist?

- Mediators are not regulated
 - Look for accreditation
 - Ontario Association for Family Mediation
 - www.oafm.on.ca
 - Ask for a preliminary meeting to decide if the person is right for you

- Arbitrators are regulated but skills and experience vary
 - Lawyers can help you choose

The “Need to Know” Basics

2. How do I choose an ADR specialist?

Things to look for:

- Consider if you have unique concerns about culture or religion or a disability
- Consider if there was or is abuse with your partner
- Ask if the ADR specialist has any familiarity and experience with these issues
- Look for biases

The “Need to Know” Basics

3. How do I prepare for ADR?

- think about the things that you and your partner can't agree on
- think about the solution you want from ADR
- Talk to a lawyer or research about your legal rights
- Research about the kind of ADR you choose
- Bring information with you about your finances and the things you want to ask for
- prepare questions for the ADR specialist to be sure you understand the process

The “Need to Know” Basics

4. Do I need a lawyer for ADR?

- Negotiation can work well without a lawyer
- Other ADR types, such as mediation and arbitration, are most successful with a lawyer
- Arbitration requires initial legal advice to ensure you understand the process
- Collaborative family law requires lawyers in the process

The “Need to Know” Basics

5. How do I pay for ADR?

- Parties usually share the cost equally
- Arbitrators/Parent Coordinators can “re-align” more costs to one party in an award
- Free and subsidized mediation services are available at courthouses
- Free Legal Aid mediation if one party is eligible
- You can ask an ADR specialist to reduce fees

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Additional Resources

Additional Resources (ADR)

Finding a Mediator, Arbitrator, or other ADR Professional

- Ontario Association for Family Mediation
<http://www.oafm.on.ca/>
- Family Mediation Canada
<http://www.fmc.ca/>
- ADR Institute of Ontario
<http://www.adrontario.ca/findapro.cfm>
- Ontario Collaborative Law Foundation
<http://www.oclf.ca/>
- Collaborative Practice Toronto
<http://www.collaborativepracticetoronto.com/>

Ontario Ministry of the Attorney General - Family Arbitration

- <http://www.attorneygeneral.ius.gov.on.ca/english/family/arbitration/default.asp>

Additional Resources (Family)

Assaulted Women's Helpline

www.awhl.org

- Toll-free: 1-866-863-0511; TTY: 1-866-863-7868
- Toronto: 416-863-0511

Legal Aid Ontario

<http://www.legalaid.on.ca/en/getting/default.asp>

- Toll-free: 1-800-668-8258; TTY: 1-866-641-8867
- Toronto: 416-979-1446 (accepts collect calls)

Family Law Information Centres (FLICs)

http://www.legalaid.on.ca/en/getting/type_family.asp

Family Law Services Centres (FLSCs)

<http://www.legalaid.on.ca/en/contact/contact.asp?type=flsc>

Family Law Education for Women (FLEW)

<http://www.onefamilylaw.ca/en/resources/>

Femmes Ontariennes et Droit de la Familles (FODF)

<http://undroitdefamille.ca/>

Ontario Women's Justice Network (OWJN)

www.owjn.org

Additional Resources (Legal)

Law Society of Upper Canada Lawyer Referral Service

<http://www.lsuc.on.ca/with.aspx?id=697>

- Toll-free: 1-800-268-8326
- Toronto: 416-947-3330
- TTY: 416-644-4886

JusticeNet

<http://www.justicenet.ca/directory/search/>

- Reduced fee lawyers for low income people not eligible for Legal Aid

Find a community legal clinic near you

<http://www.legalaid.on.ca/en/contact/contact.asp?type=cl>

Toolkit for a good Client-Lawyer Relationship

<http://schliferclinic.com/vars/legal/pblo/toolkit.htm>

- Barbra Schlifer Commemorative Clinic

Additional Resources (General)

Ministry of the Attorney General

<http://www.attorneygeneral.jus.gov.on.ca/english/>

- Toll free: 1-800-518-7901
- TTY: 1-877-425-0575

211 Canada.ca

<http://211canada.ca/>

- Multi-lingual information about community and government services

CLEO's Your Legal Rights

<http://yourlegalrights.on.ca>

- Legal information resources, services map, news & events and training webinars

Additional Resources (General)

Online forms

<http://www.ontariocourtforms.on.ca/english/family/>

Ontario Court Forms Assistant

<https://formsassistant.ontariocourtforms.on.ca/Welcome.aspx?lang=en>

- Get help online to complete family court forms

Ontario Courts

<http://www.ontariocourts.on.ca/>

- Online guide provides an overview of all courts in Ontario
- Information on family courts:
 - Superior Court of Justice <http://www.ontariocourts.ca/scj/en/famct/>
 - Ontario Court of Justice <http://www.ontariocourts.ca/ocj/family-court/overview/>

Ontario Court Locations

http://www.attorneygeneral.jus.gov.on.ca/english/courts/Court_Addresses/

- Find court addresses across Ontario

Additional Resources (Victim Assistance)

Victim Crisis Assistance and Referral Services (VCARS)

- Immediate, on-site service to victims of crime 24 hours a day, 7 days a week
- Toll-free: 1-888-579-2888
- Toronto: 416-314-2447

Victim Support Line (VSL)

- province-wide, multilingual, toll-free information line providing a range of services to victims of crime
- Services available from 8 a.m. to 10 p.m., 7 days a week in 13 languages
- Toll-free: 1-888-579-2888
- Toronto: 416-314-2447

Court Prep

www.courtprep.ca

- provides information on the Canadian legal system and prepares victims and witnesses to give evidence