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Family Law Arbitration

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All Women. One Family Law.
Know your Rights.

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Education for Women
Women's Right to Know

fodf Femmes ontariennes et
droit de la famille
Le droit de savoir

Family Law Arbitration

This booklet is meant to give you a basic understanding of legal issues. It is not a substitute for individual legal advice and assistance. If you are dealing with family law issues, get legal advice as soon as possible to protect your rights. For more information about how to find and pay for a family law lawyer, see our booklet on "Finding Help with your Family Law Problem" on our website at www.onefamilylaw.ca.

When you and your partner separate, you will have to deal with several legal issues. For example, you must decide about financial support, how to care for your children and how to divide the family property. You can go to court to make these decisions. You can also make informal arrangements or use **alternative dispute resolution (ADR)**.

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What is arbitration?

Arbitration is one kind of alternative dispute resolution (ADR). ADR is a way for people to try to work out legal issues without going to court. You cannot be forced into ADR for a family law case. You and your former partner must choose it freely.

Do not use ADR to settle a dispute with someone who has been violent or abusive. Do not use it with someone who has tried to bully you, or someone who has more power than you.

In arbitration, you and your former partner hire a third person to resolve your conflict. This person is called an **arbitrator**. An arbitrator cannot grant a divorce or an annulment but can decide on custody, support, access and how to divide property.

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They can only decide on the issues you ask them to resolve. The arbitrator must use only Canadian or Ontario family law.

Arbitration is like a court case, but it is less formal. Most people have a lawyer. At the hearing, both you and your former partner can give evidence and say what you think is fair. After each of you has talked, the arbitrator will make a decision. Their decision is called an **arbitral award**.

If you do not know your rights under Canadian laws, talk to a lawyer before agreeing to arbitration. Once arbitration starts, you cannot decide to walk away. You must obey the arbitrator's decision even if you do not agree with it. As long as the arbitral award follows Canadian laws, it is legally binding.

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Arbitration can be expensive because you should have a lawyer. You may also have to pay the arbitrator. Even if you do not have a lawyer with you at the hearing, you must prove that you got legal advice before agreeing to arbitrate. The cost will depend on how much the arbitrator and lawyer charge. Legal Aid will not pay for family law arbitration.

How is arbitration different from mediation?

People often think arbitration is the same as **mediation**. It is not. Mediation is another form of ADR. In mediation, a trained mediator helps people come to an agreement. If you are in mediation, you have choices. You can end the talks at any time or decide not to accept what your spouse is offering or the mediator is

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suggesting. In arbitration, you have no choice. You must accept the arbitrator's decision, as long as it follows the law. You can appeal a family arbitration award to the court in some circumstances.

How is arbitration different from a private agreement?

Sometimes, women are pressured into asking someone they respect, like a doctor or religious leader, to make a decision about a family law dispute. If the person is not an arbitrator, their decision is not legally binding and cannot be enforced.

If you are worried that the person making decisions about your case is not a real arbitrator, ask to see proof that they are qualified to do this work. In Ontario, arbitrators who are not lawyers must have

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some training in family law. Also, all arbitrators must have training in how to recognize the signs of domestic violence.

How are arbitral awards enforced?

After arbitration, you can bring an application in the family court to enforce the award. Once the application is filed, the court can decide to enforce the arbitration award as if it were a court order if it meets certain conditions.

Advantages and disadvantages

Some people say that arbitration is good because:

- it is more efficient, less formal and less expensive than going to court;
- the process is flexible;
- you and your former partner can choose who will arbitrate your dispute.

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However, many people say that arbitration is not a good way to resolve family law disputes. The arbitrator has a lot of power and can make decisions that are unfair. Also, arbitration may not work well for women because many women cannot afford a lawyer. If you do not have a lawyer, you may not know all of your rights and you may not know how to convince the arbitrator of your case.

What the law says about family law arbitration

Here are the most important things that the *Arbitration Act* says about your rights:

- All family law arbitrations must follow Canadian or Ontario law or they are not legal. For example, arbitrators cannot rule that your husband can take more than half of the value of family's property because Canadian laws say that each spouse should

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get half of the value of property when a couple gets a divorce.

- A private decision made by someone who is not a family law arbitrator is not legally binding and cannot be enforced.
- In family law arbitration, the *Family Law Act* is more important than the *Arbitration Act*. Courts must use family law principles.
- All arbitration awards are “domestic contracts”. Courts should treat arbitral awards the same way they handle all domestic contracts.
- Any arbitral award about children must follow the “**best interests of the child**” test. Arbitrators must consider the same things that family law courts consider when they decide what is in the child’s best interest. These things are listed in section 24 of the *Children’s Law Reform Act*.

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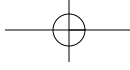
- You always have the right to ask the court for **permission to appeal** an arbitral award. You cannot give up that right. If you challenge the award, the court can substitute its own decision for the arbitral award. The court may do this if the arbitral award says anything not related to family law or if it orders something that the court would not have ordered. Courts will also check that arbitral awards about custody and access follow the *Children's Law Reform Act*. The court will only enforce orders that are in the best interests of the children.
- All family law arbitral awards must be in writing.
- Starting in April 2008, all family law arbitrators who are not lawyers must take training in Canadian family law. All arbitrators must take training to learn about domestic violence.

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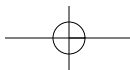
- Arbitrators must make sure that the process will be fair. To do this, they must investigate whether there has ever been violence or abuse in your relationship. They must also check that you and your former spouse have equal power and control in your relationship. Although arbitrators have the power to set up ways to protect you in these circumstances, most people agree that arbitration does not work well if your spouse was violent or abusive, if he has tried to bully or scare you, or if he has taken advantage of you.
- Before you start arbitration, you must sign a form that says you got **independent legal advice**. The lawyer who gave the advice must also sign the form.

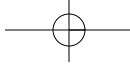
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- Arbitrators must report twice a year to the Ministry of the Attorney General. They must report on every family law case they arbitrated in that period. Arbitrators must also keep records of all arbitrations for at least 10 years.

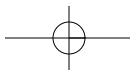


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If you are a francophone woman living in Ontario, you have the right to access French language services in family law court proceedings. For more information regarding your rights, contact a lawyer, a community legal clinic, or the support line Femaide at 1-877-336-2433, TTY 1-866-860-7082.

You can find more information on how to access services in French on our website at www.onefamilylaw.ca or www.undroitdefamille.ca.

Family Law Topics Available*

■ Working with Your Lawyer (ST)

1. Alternative Dispute Resolution and Family Law (ST 001)
2. Child Protection and Family Law (ST 002)
3. Child Support (ST 003)
4. Criminal and Family Law (ST 004)
5. Child Custody and Access (ST 005)
6. Domestic Contracts (ST 006)
- 7. Family Law Arbitration (ST 007)**
8. Family Law Issues for Immigrant, Refugee and Non-status Women (ST 008)
9. Finding Help with your Family Law Problem (ST 009)
10. How Property is Divided in Family Law (ST 010)
11. Marriage and Divorce (ST 011)
12. Spousal Support (ST 012)

** This booklet is available in multiple formats. Please see www.onefamilylaw.ca for more information. You can also find additional materials on the website to help you understand your family law rights.*

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