



RIVERDALE MEDIATION

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What's new at Riverdale Mediation

We have recently finished our spring training and thank our wonderful teaching colleagues Barbara Fidler, Tom Bastedo, Barry Fisher and Heather Schwartz, as well as our guest speakers: Herschell Fogelman, Cheryl Goldhart, Greg Cooper, Anisa Ali, Regina Thompson, Adam Black, Rhadika Lakhani and Sharon Cohen.

We are always busy with the internship program. Our current interns are: Elizabeth Hyde, Victoria Starr, Joel Skapinker, Regina Thompson, Monica Curyk and Michelle Roy. Our website has been updated, please take a look and let us know what you think. Feel free to submit guest blogs or articles or just to post a comment...

Welcome to our New Associate Christine Kim

Christine Kim joins the team as a new parenting mediator and P.C. Christine has over twenty years experience working in the Social Work

field. Christine has been a bit of a professional chameleon, working with diverse groups, ranging from street kids to seniors, both locally and globally.

their relationship so they can co-parent effectively. Her approach is family- focused and child-centered. She maintains the best interest of the child as the foundation for all negotiations. Her intuitive nature combined with her goal oriented focus has always been a successful combination towards reaching an agreement.



Christine graduated from the University of Toronto, receiving her Master of Social Work in the Interdisciplinary Graduate Collaborative Program in Ethnic-Pluralism. She is an Accredited Family Mediator with the Ontario Association of Family Mediation, and will soon be a Child Protection Mediator on the Ontario roster. She worked as an on-site mediator in the Brampton Courthouse with Peel Family Mediation Services for 7 months.

Christine resides with her partner and two children in Thornhill. She can also be found performing on taiko drums across Toronto.

Christine has a rare ability to balance non-nonsense verbal skills with warm, sincere affect to make people comfortable expressing what is important to them. She recognizes that part of her role as a mediator is to help parents redefine

Ms. Kim will be in the office Tuesdays and Thursdays to take mediation and parenting coordination cases.



Article of the Month: When Med/Arb Goes Bad

Lorne Wolfson, Torkin Manes LLP

In recent years, mediation-arbitration (or “med-arb” as it has come to be known) has become the preferred choice for many family law lawyers and their clients. Med-arb received a significant boost when it was recognized and endorsed by the Ontario Court of Appeal in *Marchese*. Its success rate (the vast majority of cases settle in the mediation phase) has made it more popular in many circles than its cousins (traditional mediation, collaborative law or litigation). While the advantages of med-arb (accessibility and adaptability, lower cost, predictability, privacy, good results, and speed) have been well-documented, less attention has been paid to those cases that are not suitable for med-arb and what the mediator/arbitrator should do when a case goes bad.

Cases Not Suitable for Med-Arb

Experience has taught us that the following cases are likely not appropriate for med-arb:

- Domestic violence or power imbalance that cannot be remedied by the presence of counsel;
- Difficulty in obtaining financial disclosure;
- A need to bind third parties;
- Party(ies) can't afford the cost of a third professional;
- Party(ies) won't respect court orders or arbitral awards;
- One party is represented by competent counsel and the other is not;
- An unhappy party is likely to abandon the process or use the arbitrator's fees as leverage;
- Case requires the arbitrator to determine a novel point of law.

Take Precautions

Wise arbitrators will take precautions at the outset before accepting cases that demonstrate any of these danger signs.

They will disclose any prior relationships with any of the parties or counsel that might possibly create a reasonable apprehension of bias. They will ensure that they use well-drafted arbitration agreements that include clauses that permit them to resign at any time, to terminate the mediation phase at their discretion, to determine the procedure for the arbitration, to retain an expert at the parties' expense, to accept retainer payments from one party on behalf of another party who has failed to pay, and to make awards for interim fees and disbursements. They will also insist on adequate retainers to ensure that they can complete their mandates (hear a motion, finish the hearing, write the award, etc.).

Terminating the Arbitration

Section 43(3) of the Arbitration Act provides that an arbitrator shall make an order terminating the arbitration if the arbitrator finds that continuation of the arbitration has become impossible. An arbitrator may resort to this provision if domestic violence or power imbalance, absence of competent counsel, or other causes prevent the arbitrator from ensuring that the parties have been treated fairly and equally or if the conduct of a party (failure to respect awards, replenish retainers, etc.) prevents the arbitrator from properly discharging his or her statutory duties.

Resignation of the Arbitrator

Section 14(1) of the Arbitration Act provides that an arbitrator may resign. While the statute is silent on the need for reasons, section 14(2) (“an arbitrator's resignation...does not imply acceptance of the validity of any reason advanced for challenging or removing him or her”) implies that the arbitrator need not give reasons for his or her resignation.

An arbitrator's resignation raises a number of issues. First, how is a new arbitrator determined? Section 16(1)

of the Arbitration Act provides that a replacement arbitrator shall be appointed when an arbitrator's mandate terminates. However, section 16(5) provides that section 16(1) does not apply if the arbitration agreement provides that the arbitration is to be conducted only by a named arbitrator. The arbitration agreement can avoid this problem by providing for appointment of a replacement either by agreement or court order. Second, what happens to the old arbitrator's awards? Do they become void upon his or her resignation? Once again, the problem can be solved by providing in the arbitration agreement that any interim awards made will continue in full force and effect until amended by either a replacement arbitrator or the court.

One Size Does Not Fit All

While med-arb continues to grow in popularity, it is important to remember that “one size does not always fit all”. Counsel should be realistic about the prospect of a successful mediation-arbitration. Parties who have generated high conflict litigation will likely generate high conflict mediation-arbitration. Such cases might best stay in the court system, leaving med-arb for those parties who are most likely to benefit from that process. Arbitrators should also be cautious when accepting cases and realistic in their assessments of what can be achieved. By identifying the “bad cases” early, arbitrators can save themselves and their clients much grief down the road.

**Lorne Wolfson is a partner at the Toronto law firm of Torkin Manes. His family law practice includes litigation, mediation, and arbitration*

Featured Associate: Kim James, B.S.W, Acc.FM

Kim James is a skilled and experienced family mediator and parenting coordinator. Her goal is to empower parents to raise their children as cooperatively and positively as they can. Kim's career has been devoted to identifying children at risk and promoting healthy parent-child relationships.

Kim has undergraduate degrees in Psychology and Social Work (with Honours) from York University. She is an Accredited Family Mediator with the Ontario Association of Family Mediation and has worked with Dufferin Child and Family Services as an Emergency After Hours Child Protection Worker, Investigation and Assessment Worker, and Manager of Family Services and Family Group Decision Making.

Kim is trained and experienced in traditional mediation approaches, family group conferencing, forensic interviewing, assessing parenting capacity and domestic violence screening.

While with Dufferin Child and Family Services, Kim implemented an Alternative Dispute Resolution program for families. This program focused on providing a way in which families involved with child protection agencies could have a voice in to decisions affecting their children. The results have been that parents have been involved and empowered in the process and their parenting plans are more successful. Kim has taken this approach



and assimilated it into her practice as a mediator by providing a process that is transparent, fair and educational. Kim is on the provincial roster as a Facilitator and Coordinator of Family Group Conferences.

Family Group Conferencing is a method of alternative dispute resolution that involves bringing family members together to have an open discussion about a current decision. It has been used to assist families making decisions with respect to elder care, child protection services and the care or treatment of a disabled family member. Kim strongly recommends this process for any family that is facing a major life transition that requires broad input.

Kim also successfully implemented a Family Visitation Program utilizing a therapeutic access approach. Families who are restricted to supervised access with their children found this approach less intrusive as the focus is to build on the parents' strengths through feedback.

Kim's approach to family mediation and parenting coordination is to help parents stay focused on solving problems in the best interests of their children. Her strong commitment to the needs of children helps her work with high conflict parents in a caring, fair and compassionate manner. Kim has devoted her professional life to exploring creative and innovate ways of minimizing the impact of family conflict on children. She works collaboratively with parents to help them discover all available options for resolving their disputes.

Kim is currently a Director with the Ontario Association of Family Mediation (2010-2011), where she sits on the Liaison and Political Action Committees. She is also a member of the Association of Family and Conciliation Courts (AFCC-Ontario) and the ADR Institute of Ontario. Kim is also affiliated with the Family Group Decision Making section of the American Humane Association.

Kim is available for mediation and parenting coordination on Mondays, Tuesdays and Wednesdays by appointment.

Hilary Linton's Latest Blog Post Mediation-Arbitration - A Useful Process

I just completed a survey for a colleague who is writing a paper on the growing use of mediation-arbitration.

For people with difficult, deeply-rooted disputes, this can be a very useful process. It offers them the opportunity to resolve the matter — hopefully quickly, confidentially and effectively — with someone in whom they have great confidence.

A good mediator-arbitrator is a trained, skilled and experienced professional, usually but not always a lawyer. In family law cases, we will meet first with each party separately to screen them and their case, to try to ensure that they and the subject of the dispute are good candidates for this special dispute resolution process.

We will then work hard with them to try to resolve the dispute in mediation.

We will encourage them both to try to craft a solution that will likely be better for them both than the alternative, which is an arbitrated decision that neither may like.

For the rest of this blog entry please visit: blog.riverdalemediation.com

Guest Article: What is Parenting Coordination?

Dr. Barbara J. Fidler

What is Parenting Coordination?

Parenting Coordination is a dispute resolution service for high conflict couples. A Parenting Coordinator (PC) is usually a mental health professional, although lawyers and mediators sometimes perform this function.

Regardless of one's profession, the PC must have experience with and knowledge of separation/divorce, high conflict families, child development, conflict resolution skills, family systems, and domestic violence.

What do Parenting Coordinators do?

The Parenting Coordinator has two general functions. One is as a coach/educator/facilitator who attempts to minimize parental conflict and enhance parallel parenting, cooperation, and mutual respect. This involves helping parents to develop more effective problem solving skills and strategies, to communicate better with each other, and to understand relevant child development principles. Whenever possible, a major goal is to help parents develop better skills so they do not need a PC.

The second function is to assist parents to implement, maintain and comply with their Parenting Plan. If there is a dispute and the parents cannot come to a mutual agreement, either on their own or with the assistance of the PC, the PC makes final and binding decisions in keeping with the children's best interests for matters that are not designated otherwise in the Parenting Plan. However, the PC does not make binding decisions regarding legal custody, relocation and/or parenting time schedules, other than those of a minor and temporary nature.

What types of situations are best suited for Parenting Coordination?

Parents may want to consider hiring a Parenting Coordinator when other avenues of problem and conflict

resolution have been unsuccessful and when disagreements persist. It may be helpful for families where parents remain very angry at each other, and/or where the parents have difficulty sharing child-related information in an effective and child-focused manner.

Parenting Coordinators may be useful in families where parents have concerns about drugs, alcohol, child abuse, and/or the stability of the other parent. Parenting Coordination may be helpful in resolving interim arrangements and issues for parents who are separated although living temporarily in the same home. Also, the PC may be useful to families with young children when the Parenting Plans include schedules that change incrementally over time. In this scenario the PC assists the parents to implement the evolving parenting time schedule, making minor adjustments in accordance with the children's best interests.

Many, although not all families, have already participated in a custody/access assessment. All families will have a Parenting Plan. Some of these plans, though, require more specification and clarification, which can be accomplished in Parenting Coordination.

What is involved in the referral and intake process?

The Parenting Coordinator accepts referrals after obtaining preliminary information from the parents and lawyers, if they are also involved. A review of the current Parenting Plan, Court Order and custody/access assessment report, if available, is required. If lawyers are involved, a brief conference call is advised to review the situation and mandate. The parents attend an information meeting with the Parenting Coordinator during which the Parenting Coordination Retainer Agreement (subsequently referred to as Agreement) is reviewed. The parents and lawyers will be provided with this Agreement prior to the conference call and/or information meeting. A retainer is accepted in advance for this preliminary work.

The Parents must consent to the specific Parenting Coordinator. It is strongly advised that the parents' consent be formalized into a Court Order. The parents are strongly encouraged to obtain independent legal advice prior to signing the Agreement.

Obtain independent legal advice prior to signing the Agreement.

What happens during the Parenting Coordination process?

The PC will have full access to any reports and documentation that may be relevant, as well as to any other professionals, who have been or continue to be involved with the family. Meetings with the parents and sometimes the children in various combinations may be regular or on an as-needed basis when a problem arises. When a dispute occurs that the parents are unable to resolve on their own, the Parenting Coordinator will attempt to assist them by providing support, education, and facilitation. If the parents cannot come to an agreement, the PC will make a binding decision relying on information from the parents, and where necessary the children and other professionals (e.g., doctors, teachers, therapists, etc.).

Once the parents have agreed to a Parenting Coordinator, they may be "stuck" with that person for the term that is defined in the Agreement and/or Order comes to the conclusion that he/she cannot be helpful to the family, he/she can resign. However, if only one parent is unhappy with the Parenting Coordinator, that parent cannot dismiss the PC prior to the previously agreed to term.

Fees are paid by the parents in accordance with the Agreement. Typically, Parenting Coordinators request a retainer when they begin their work with a family.

**Permission was granted by Dr. Barbara Fidler for use of the above information.*

Reflections from AFCC Conference – Denver 2010

Christine Kim

I recently returned from spending a week in Denver at the AFCC 47th annual conference. It was my first AFCC conference. In many ways, it had the significant new moments that mark any first occasion. But to me what was most significant about this conference is how it made me reflect on the role mediation played in my household as a child. And - something that was lost on me at the time - the wisdom that is required to be effective at creating consensus out of conflict.

The trip started with my dad patiently waiting in the driveway to take me to the airport at the bright and early hour of 5am. He's not a man of many words. It is not unheard for us to travel many hours without a word exchanged. After I explained what AFCC is all about and my role as a mediator, he asked with a puzzled look, "So, people actually get paid to do that?"

You see, my dad is one of the first Korean immigrants to arrive in Canada – a true pioneer. But it is not his time of arrival that makes him a pioneer in the Korean community but his involvement in the community. During my childhood, our living room became the hub of community meetings and mediation sessions. Whether they were families in conflict or an upset community member who felt misunderstood, there sat my parents facilitating discussions and finding a way to work things out.

I recall one day, a woman who was in conflict with her husband, sat on our back porch while my parents met with her husband in the living room – this was a true old-fashioned "caucus". She leaned over to me and said, "Your parents are very wise."

Although I can appreciate that observation now, as a kid, my parents were just being parents and wise was not a description I would have bestowed on them.

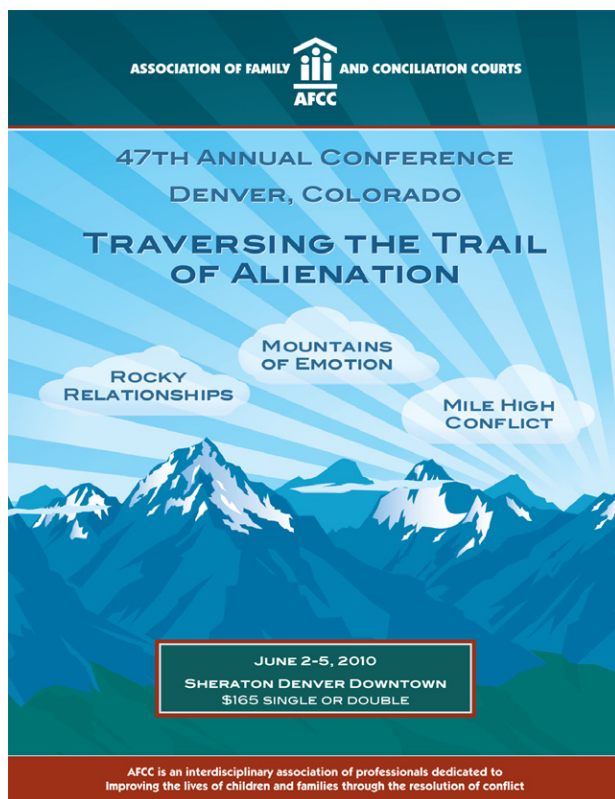
My sister and I were exposed to late meetings, often filled with high emotions and lots of tea. Most cases, the meetings would end with tears and hugs and closing words of wisdom.

Looking from the lens of my dad, his question makes a lot of sense. Here is a man who has dedicated his life to building a community.

As someone who is respected and wise, people would naturally come to him to help solve their issues. This idea seems so basic and organic when viewed in this way.

I sit in the AFCC plenary session, surrounded by hundreds of people, who have numerous letters behind each name indicating their level of education and indicating their competence and expertise. I realize in many ways, this collaborative approach is like a big powwow of community members helping people live their lives with dignity and to build a sense of community.

As I listen to Hon. Emile R. Kruzik's closing speech, filled with emotion and gratitude, I realized that being the President of AFCC is not just about



leading an organization but it's about trying to do what my parents have done for decades. I am surrounded by people who are "carriers of wisdom" trying to find the ways to colleagues, mentors and friends and a sense of community and renewed energy into the important work we do.

To my father's question, I respond, "Yes, dad. We get paid. It's hard work." He kept his eyes on the road and responded with a quiet "hmm".

To find out about upcoming conferences with AFCC please visit their website at: www.afccnet.org

If you would like to be a guest blogger on Riverdale Mediation or guest author in our monthly newsletter, please contact our editor, Marlo Drago: marlo@riverdalemediation.com



RIVERDALE MEDIATION

Upcoming Courses Fall 2010

14 HOUR SCREENING FOR POWER IMBALANCES AND DOMESTIC VIOLENCE IN FAMILY MEDIATION/ARBITRATION AND ARBITRATION SCREENING & LAW UPDATE

Hilary Linton, *Riverdale Mediation*
Brahm Siegel, *Nathen Siegel LLP*
Cheryl Goldhart, *Goldhart and Associates*

Date: 14 Hour Course - October 20 & 21st, 2010 *Location:* Riverdale Mediation
10 hour Course – October 21st, 2010

“The course was extremely informative, presented well by various professionals. A terrific learning experience”

30 HOUR FAMILY LAW COURSE

Hilary Linton, Nicole Tellier, Susan Jack,
Ken Nathens, Adam Black and Elizabeth Hyde

30 hours of comprehensive, basic level overview of family law using lectures, class exercises, discussion and guest speakers.

Date: March 2, 3, 4, and 5, 2011

Location: Riverdale Mediation

For more information about upcoming courses at Riverdale Mediation, please refer to our website at www.riverdalemediation.com or email training@riverdalemediation.com

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