

Family

Ontario family mediation: World class excellence | Hilary Linton

By Hilary Linton



Hilary Linton

(June 30, 2021, 1:28 PM EDT) -- If Gary Joseph's opinion is reflective of what Ontario lawyers know about family mediation practice in our province, (June 22, 2021, "Mediation: The unregulated profession") some serious correction is called for.

Family mediation has been a highly functional self-regulating profession since 1984 when Family Mediation Canada (FMC) was created by the federal Department of Justice.

I am among the many hundreds of Ontario family mediators who carry mediation liability insurance and have earned family dispute resolution (FDR) professional designations from the Ontario Association for Family Mediation (OAFM), the Family Dispute Resolution Institute of Ontario (FDRIO) and/or FMC. The ADR Institute of Ontario (ADRIO) also offers a family mediation designation.

These are well-established not-for-profits managed by volunteer boards and led by professional executive directors. They have standards of practice and complaints policies, hundreds of hours of required training and experience, detailed and current screening protocols and annual training requirements. They support their members with mentorship, newsletters, conferences and education. Screening for power imbalances is mandatory for all those carrying professional FDR designations.

I train dozens of new family mediators each year. Almost all will become professionally certified and insured. Almost all will incorporate family violence screening protocols into their practices.

Mr. Joseph identifies California as a leading mediation jurisdiction. There is a rich culture of mediation in America, California included. Many of the great writers and thinkers in our field are Americans. But private family mediation is virtually unregulated there. Its *Mediation Code*, though helpful, provides no training or best practice requirements and merely codifies what most family mediators here already include in their Agreements to Mediate. It says nothing about screening. (Court mediators in California as elsewhere are governed by county.)

Mr. Joseph appears not to know that many, perhaps even most, American family mediators have never taken training in screening for power imbalances including family violence, and do not do it. Canada and Ontario are leading jurisdictions for training, standards and experience in power imbalance screening, process design and safety planning in family mediation.

When the Ministry of the Attorney General (MAG) looked for the best practices for arbitration screening in 2007, it chose to emulate for arbitrators the expertise that was developed by Ontario's family mediators for over 20 years.

The largest cohort of Ontario family mediators are those working with court-connected service providers. Most of them are also family lawyers, mental health professionals or financial professionals. Almost all hold professional mediation designations along with their other professional qualifications.

The agencies who retain these mediators are regulated by and answerable to MAG.

I operate a Toronto family mediation service provider, mediate393 inc. I can assure Mr. Joseph of the integrity of process, including screening for family violence, that takes place at every mediation we do. Such best practices are repeated daily in every court connected mediation across the province.

The high levels of client satisfaction expressed by the users of these mediation services speak for themselves. Few jurisdictions, if any, boast such strong quality control in their mediation practices.

Having said all of this, there is room to improve.

Some provinces have mandatory training standards for family mediators. In British Columbia, for example, family mediators must meet the requirements set out in the *Family Law Act*. If this were done in Ontario it would help ensure that all mediators meet the same high standards as court-connected mediators.

Another step forward would be for the Law Society of Ontario (LSO) to follow the lead of B.C. and develop some standards for lawyers who act as family mediators. There are some lawyers here holding themselves out as mediators who have not taken mediation training, nor do they screen for power imbalances.

The LSO also has the power to prosecute those who engage in the unauthorized practice of law in the guise of mediation. It has used this power to protect the public successfully in the past. Perhaps this remedy is underused.

And there are, in mediation as in every profession, those who do excellent work and those who do mediocre work. There are those who are highly experienced and those who are less so. No amount of regulation will change that.

My suggestion to Gary Joseph is this: if you are looking for mediation excellence, make sure your mediator holds a current professional family mediation designation. Ideally, they will have experience working in a court-connected mediation program.

FDRIO provides certifications not only in family mediation, but also arbitration and parenting co-ordination. This would indicate a high level of expertise in the FDR field. OAFM has been accrediting mediators for many years and established the province's first protocol for family violence screening. FMC's professional designation is the "gold standard" in the country.

The public is well served by these active organizations whose dedication to excellence in family mediation will be obvious to anyone who does a bit of research on the subject.

Hilary Linton provides court-connected family information and mediation services with Toronto Family Mediation Services. Log onto the website at www.mediate393.ca or contact her at (416) 593-5393.

Interested in writing for us? To learn more about how you can add your voice to The Lawyer's Daily, contact Analysis Editor Richard Skinulis at Richard.Skinulis@lexisnexis.ca or call 437- 828-6772.