

Different Methods Of Resolving Family Law Disputes

After the breakdown of a serious relationship or marriage, the individuals involved will often have a number of difficult issues to resolve in order that they may each move on with their lives. Those issues may include: custody of children, child support, spousal support, property division and the disposition of the matrimonial home.

One of the first decisions that the parties will have to make is how are they going to resolve these issues. Although there are numerous ways of resolving any dispute, this article will examine 4 methods that are often used in a family law context:

- Negotiation
- Mediation
- Collaborative Family Law
- Litigation

Negotiation

Negotiation is probably the most common form of dispute resolution in family law. It normally involves each party retaining a lawyer who, acting on the client's instructions,



will negotiate a resolution of the issues on behalf of the party.

Depending upon the issues involved, it may be necessary for the lawyers and parties to meet at a “4-way meeting” to help resolve any outstanding matters. If a settlement is reached, it will be documented in a Separation Agreement which will be signed by both parties.

Mediation

Mediation is a method of dispute resolution in which the parties

retain a third party (i.e. the “mediator”) to assist them in resolving the outstanding issues between them.

The mediator does not take sides nor does he/she resolve the issues for the parties. The parties negotiate the settlement themselves. The mediator's role is simply to facilitate a discussion between the parties that will hopefully lead to a settlement. If a settlement is reached, the mediator will normally draft a Separation Agreement that details the settlement.

Collaborative Family Law

Collaborative family law is a process where the parties agree to resolve the outstanding issues between them in a cooperative rather than adversarial manner. The parties, with the assistance of specially trained family law lawyers, will identify each party's interests and will then attempt to craft a resolution that will respect and meet those interests. The process is designed to minimize posturing and tactical maneuvering and to focus as much as possible on settlement. If a settlement is reached, it will be documented in a Separation Agreement that will be signed by both parties

Litigation

Litigation is a process whereby the parties go to court and ask the court to decide the outstanding issues for them. The parties will often have to attend in court on a number of occasions before the matter is either settled or a trial is held. If a trial is held, the judge hearing the matter will impose a decision which is binding on the parties. Notwithstanding that the parties are in court, they may still agree on a settlement. In fact, over 95% of the cases that go to court will settle before a trial is held.

The choice of the method of dispute resolution will be a critical aspect of resolving any family law dispute.

Clients will have to consider the nature and scope of the outstanding issues, the reasonableness of the opposing party, the level of cooperation and communication with the opposing party, finances and any history of domestic violence in deciding which method is appropriate for them. It is highly recommended that a full and frank discussion

If you have any questions concerning the termination of an employee or employment law in general, please do not hesitate to contact David Sinclair directly 613.288.3226 or by email at dsinclair@tslawyers.ca.

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CALL TO THE BAR

Law Society of Upper Canada, 2000

EDUCATIONAL BACKGROUND

Queen's University, LL.B., 1998

Carleton University, B. Com., B.A. (Statistics), 1993

PRACTICE SUMMARY:

David joined Tierney Stauffer LLP in 2001 as an Associate in the Family Law Practice Group. In 2007, he was appointed as the Head of the Family Law Practice Group. David practices in the areas of family law, civil litigation, and estate planning and administration. David has also completed the Collaborative Family Law Training and will be practicing in this area of law in the Fall of 2008. He has extensive experience in resolving all of the issues that arise out of a breakdown of a marriage or relationship, including custody, child support, spousal support, property division, as well as drafting and negotiating domestic contracts such as marriage contracts, cohabitation agreements, or separation agreements. He is a tutor for the Law Society of Upper Canada for the Estate Practice section.

Prior to joining Tierney Stauffer LLP, Sébastien practiced with another Ottawa law firm where he gained experience in tax law, charity law, estate planning and will drafting.