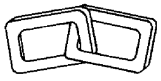
INTERACTION CONSULTANTS 

Domestic Violence and Power Imbalances in the Context of Separation/Divorce Settlement

As per the Family Statute Law Amendment Act (2006) of the Province of Ontario, the merits of an application to the courts, for custody or access to a child, shall be determined on the basis of the best interests of the child. Also included in the Act is that the court shall consider matters of violence or abuse against the applicant's spouse, parent of the child, any child or other members of the household.

Note however that this statute relates to the determination of violence and/or abuse issues as a factor in considering the best interests of the child and is not directed to the actual process of determination per se. In other words, matters of domestic violence and power imbalances are not required considerations in terms of court processes.

However, the new regulations (April 30, 2007) of the Arbitration Act require the arbitrator to consider the presence or impact of domestic violence, power imbalances and safety considerations on the actual process of arbitration. Here, the arbitrator is required to consider these matters as they might impact the actual arbitration process and safety of the parties and their children. To this end, there are rules in place regarding screening and requiring Family Arbitrators to be trained in screening and understanding matters related to domestic violence and power imbalances.

The Ministry of the Attorney General, for the Province of Ontario indicates that there is no prescribed method of screening for family arbitration and no prescribed screening report but does suggest that the training should follow the principles set out in the Ontario Association for Family Mediation's Policy on Abuse.

The legislative changes in the Province of Ontario requiring screening and training, speak to the concern that persons using arbitration as an alternate dispute resolution mechanism may not be doing so entirely voluntarily and/or without coercion with regard to the process and/or outcome. This was a matter long ago addressed by practitioners in the mediation communities wherein there was a history of concern, mainly for women, entering mediation, yet still subject to the impact of domestic violence and/or power and control issues.

As a result of these changes in the Province of Ontario, many practitioners of mediation and now all practitioners of family arbitration are increasingly informed in these matters or are in the process thereof.

Collaborative Law groups are yet to set standards of practice in view of these issues. However, there are practitioners of Collaborative Law with knowledge and training in mediation, where that knowledge and training may have included addressing issues of domestic violence and power imbalances. Further, the practice of family law does not specifically require any such training in matters of domestic violence and power imbalances.

For consumers seeking help in sorting out their separation/divorce agreement, particularly where there will be an ongoing parental relationship, it is likely wise that if they feel these issues to be at play in determining their settlement agreement, that they seek service providers with such training.

At issue in addressing these concerns are; the ability of the parties to freely engage in the process without fear of undo influence; due consideration to safety concerns for all involved in the presence of such issues; and that any agreements take these issues into consideration as appropriate.

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Gary Direnfeld is a social worker. Courts in Ontario, Canada, consider him an expert on child development, parent-child relations, marital and family therapy, custody and access recommendations, social work and an expert for the purpose of giving a critique on a Section 112 (social work) report. Call him for your next conference and for expert opinion on family matters. Services include counselling, mediation, assessment, assessment critiques and workshops.