



ending violence against women

## **Alternative Dispute Resolution**

*by Pam Cross, LLB*

There are a number of ways to resolve the disputes that arise on relationship breakdown that do not involve going to court. The most common are mediation, collaborative law and arbitration.

None of these models is a good one for most women who are leaving an abusive relationship. The disparity in power and the often ongoing, subtle controlling behaviours of the abuser make it difficult if not impossible for the woman to enter into any truly free discussions.

No matter the situation, it is very important for anyone using an alternative dispute resolution technique to get independent legal advice before signing any kind of agreement.

**Mediation** involves discussions between the two people, facilitated by a third party, to try to resolve the issues. The mediator cannot impose an outcome on the people, but can help them try to come closer to an agreement. People can choose to set aside many legal rights and responsibilities. Mediation is available at all family court locations in Ontario.

Once the agreement is signed, it is legally binding and may be very difficult to change in the future. It can have an enormous impact on important issues like custody, access and support.

Anyone considering signing a mediation agreement should have independent legal advice before doing so.

**Collaborative law** is becoming very popular in Ontario. Each person has their own lawyer and the four people work together, cooperatively, to resolve the issues. Each lawyer enters into a contract with her client at the beginning of the process, in which she states that she will not go to court. If the negotiations are unsuccessful, the people would have to hire new lawyers to go to court.

Legal aid is not available for collaborative law, so this will not be an option for anyone of limited financial means.

**Arbitration** is a process in which the people choose a third party to act as the decision-maker over their dispute. The arbitrator must have received training in family law and domestic violence, and must apply only Ontario and Canadian family law. The people

must have had independent legal advice before starting arbitration and have the right to appeal the decision of the arbitrator to the courts. Arbitrators must have a domestic violence screening conducted on people before they begin arbitration.

Only very limited legal aid is available for arbitration, so this will not generally be an option for anyone of limited financial means.

*This resource contains general legal information only. It is not a legal document, nor is it a replacement for legal advice. Anyone in a situation involving family, immigration or refugee law is strongly urged to meet with a lawyer to understand fully their rights and responsibilities, the legal options available to them and appropriate legal processes. A lawyer can interpret the law and provide advice based on the personal facts and information in the specific case.*

*For information about finding a lawyer in your community, contact Legal Aid Ontario at **1-800-668-8258** or **416-979-1446**. You can also visit Legal Aid Ontario online at **[www.legalaid.on.ca](http://www.legalaid.on.ca)***

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