

“OPTIONS FOR HIGH CONFLICT PARENTING”

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Of all the issues that family law lawyers and judges are faced with, disputes over children are widely considered to be the most challenging, with the most difficult being high conflict parenting cases.

There are many available publications and experts to provide assistance in determining how and why parents become involved (and entrenched) in such hostile circumstances. The unfortunate result is that their children will invariably be impacted by the dispute.

This brief paper is intended to provide a checklist of the options available to judges and lawyers to assist in the resolution of such parenting disputes. Admittedly, it has an Alberta “bent”.

1. Mediation

- A mediator is a neutral trained third party who is retained to assist parties in coming up with their own a resolution. Section 9(2) of the Divorce Act, R.S.C. 1985 c.-3 obliges lawyers to advise client of mediation facilities and the advisability of negotiating custody (and support) matters. I would suggest that judges can order a mediation pursuant to their parens patriae jurisdiction or as a condition of a custody/access order. There is an issue as to the potential effectiveness of mediation if one or both parents are not committed to the process. However, it is possible for a highly skilled mediator to successfully mediate high conflict parenting cases.

2. Mediation/Arbitration

- A designated mediator is authorized by the party’s prior written agreement to make a binding decision on matters that can not be resolved by the parties, after they have attempted mediation. It is unlikely that a Judge can compel arbitration, unless the parties prior agreement provides for such a process.

3. Mandatory Government Mediation Services

- The Dispute Resolution Officer (“DRO”) is an Alberta Court Project that requires all parties bring court applications for child support to meet with a DRO (being an experienced family law lawyer) before any appearance in court. As custody matters are often paired with child support applications, the DRO also regularly deals with parenting issues. DRO attendances prior to a parenting application being heard, are not mandatory, but rather voluntary. Having said that, I have witnessed judges