



Legal Education
Society of Alberta

62147.00

Alternative Dispute Resolution

Edmonton, Alberta

February 25, 2020

Calgary, Alberta

February 19, 2020

Chair

Brad Mustard

Moe Hannah LLP

Calgary, Alberta

Faculty

Rhoda Dobler QC

Widdowson Kachur Ostwald Menzies LLP

Calgary, Alberta

Sid Kobewka

Kobewka Stark Lawyers and Mediators

Edmonton, Alberta

Robert McBean QC

Parlee McLaws LLP

Edmonton, Alberta

Jim McCartney

McCartney ADR

Calgary, Alberta

LEGAL EDUCATION SOCIETY OF ALBERTA

These materials are produced by the Legal Education Society of Alberta (LESA) as part of its mandate in the field of continuing education. The information in the materials is provided for educational or informational purposes only. The information is not intended to provide legal advice and should not be relied upon in that respect. The material presented may be incorporated into the working knowledge of the reader but its use is predicated upon the professional judgment of the user that the material is correct and is appropriate in the circumstances of a particular use.

The information in these materials is believed to be reliable; however, LESA does not guarantee the quality, accuracy, or completeness of the information provided. These materials are provided as a reference point only and should not be relied upon as being inclusive of the law. LESA is not responsible for any direct, indirect, special, incidental or consequential damage or any other damages whatsoever and howsoever caused, arising out of or in connection with the reliance upon the information provided in these materials.

This publication may contain reproductions of the Statutes of Alberta and Alberta Regulations, which are reproduced in this publication under license from the Province of Alberta.

© Alberta Queen's Printer, 2020, in the Statutes of Alberta and Alberta Regulations.

The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

© 2020. Legal Education Society of Alberta. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise without the prior permission of the Legal Education Society of Alberta.

ISBN-10: 1-55093-742-1
ISBN-13: 978-1-55093-742-8

How Parenting Mediators Can Help Parties Rebuild Trust

Prepared by:

Brad Mustard

Moe Hannah LLP



Legal Education
Society of Alberta

Alternative Dispute Resolution
Calgary, Alberta – February 19, 2020
Edmonton, Alberta – February 25, 2020

HOW PARENTING MEDIATORS CAN HELP PARTIES REBUILD TRUST

Calculus Based Trust and Identification Based Trust.....4

Repair of Identification Based Trust6

 Develop common goals related to the children6

 Setting agenda.....7

 Focus on future not the past.....9

 Remind parties of the past where trust levels were high..... 10

Focus on Procedural Trust..... 10

 Create cooperative environment 11

 Active listening..... 12

 Reframing..... 12

 Confidence building initiatives as a means to rebuild CBT..... 13

Attribution Theory and Trust..... 14

 Situational attribution..... 16

 Intrinsic nature attribution 16

 Intentional/hostile attribution..... 16

 Attribution retraining..... 17

Conclusion..... 19

Dear Judge,

Please order my parents to stop acting horribly to each other. They call each other names and yell when they get close. They spend their time with me telling me how bad each other is. I can't even have my friends over because my parents are so bad. I hate going home and my stomach hurts all the time. I have tried to talk to them, but no one will listen.¹

Custody and parenting conflict are one of the most challenging areas for family law practitioners. Families experience high emotion and escalating conflict as they attempt to redefine their parenting plan, in a post separation reality. Two households, reduced communication, high emotion, and reduced family resources contribute to the difficulty of defining parenting time and the roles and responsibilities for each parent. When negotiating parenting plans, emotions can dominate, as parents jockey for control, time and affection with a child. As conflict escalates through multiple court applications, parents become increasingly polarized and trust between the parent's breaks down. This polarization comes at the expense of their children. As Mr. Justice Harvey Brownstone indicates in his Book *Tug of War: A Judges Verdict on Separation, Custody Battles and the Bitter Realities of Family Court*:

“Why is litigation such a damaging and destructive way to resolve parental disputes? The answer is simple: the court system is based on the adversarial process in which “winning” is the object of the exercise. Parents who should be on the same team for their children’s sake become hostile adversaries in the courtroom.”²

In contrast to these high conflict stories numerous families choose to mediate, rather than litigate parenting issues after separation, as a means to assist them in the development of a parenting plan. A “parenting plan” is defined as a document that outlines how parents will raise their children after a separation or divorce. Parents are linked by their children, although separated, and may choose mediation as alternatives to decide their parenting schedules and plans, rather than traditional litigation. However, within mediation trust between parents can be nonexistent and damaged by the breakdown of the marital relationship. In marriage or in common law relationship that involve children, often spouses have made a partnership committed to the development of a career paths, the care of children, and the accumulation of family assets. This is radically changed for the parents by the post separation reality. Infidelity, or the moving on to a new relationship shortly after

¹ Hardwick, Charolette, *Dear Judge: Children’s Letters to the Judge*, Pale Horse Publishing, Livingstone, Texas, 2002 (Revised 4th Edition), at p. 54.

² Brownstone, Harvey, *Tug of War: A Judges Verdict on Separation, Custody Battles And the Bitter Realities of Family Court*, ECW PRESS, Toronto, Canada, 2009, at p. 12